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SIR OLIVER MOWAT

VOLUME I

AMS PRESS
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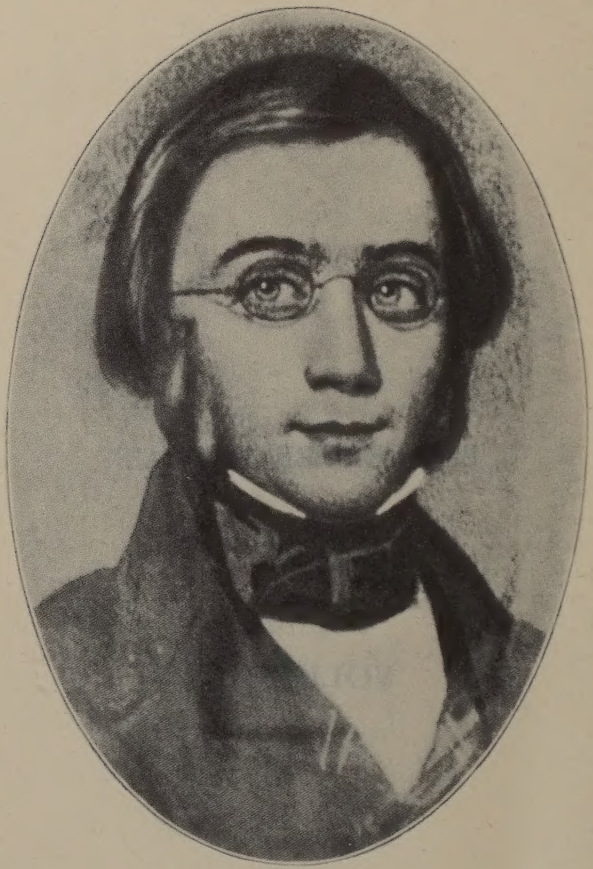

OLIVER MOWAT

Barrister-at-Law

From a miniature

SIR OLIVER MOWAT

Q.C., LL.D., G.C.M.G., P.C.

A BIOGRAPHICAL SKETCH

BY

C. R. W. BIGGAR, M.A.,
ONE OF HIS MAJESTY'S COUNSEL, ETC.

A young country does well to take careful note of all that is best in its past. The figures in the history may or may not be of heroic stature—the work done may or may not be on a grand scale. But it is foundational work, the significance of which grows with the lapse of time. Fortunate the State which, looking back upon its early builders, finds their characters stamped with the unquestioned hall-mark of truth and honour—finds their actions controlled by clear purpose and high principle. As an example and an inspiration, the memory of such builders cannot be too carefully preserved or too closely studied.'—Dr. George R. Parkin, *Preface to the Life of Sir John Beverley Robinson.*

VOLUME I

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B- MOWAT
v. 1

TO
MY BEST CRITIC

PREFACE

'His was that broad-minded, moderate Liberalism which, while recognizing the faults of an existing system, recognizes also the virtues without which that system never could have existed.'—*Graeme Mercer Adam.*

Sir Oliver Mowat, shortly before his death, asked me to be his biographer, and gave me a number of private letters and memoranda to be used at my discretion. I felt it to be a great honour, but at the same time a great responsibility. Many men have suffered at the hands of their biographers. Few have been so fortunate in this respect as Lord Macaulay, Mr. Gladstone and Bishop Mandell Creighton. I know also that there are other men in Canada, more experienced than I am in literary work, who might have performed the task better; but I think I may say without egotism (and this was perhaps one reason for Sir Oliver's request) that I have one or two qualifications for the undertaking. First, I had the honour to know Sir Oliver for more than forty years, and, during much of that time, in the intimacy of his home life. Secondly, I was more or less associated with politics and politicians during all these years, the formative period (constitutionally) of Canada and of Ontario. I speak, therefore, as an eye- and ear-witness of many things here recorded ; and, as Mr. Morley says in his *Life of the Right Hon. W. E. Gladstone*:—

'They who breathed the same air as he breathed, who knew at close quarters the problems that

faced him, the materials with which he had to work, the limitations of his time—such must be the best if not the only true memorialists and recorders.'

'That my book should be a biography without trace of bias no reader will expect. There is at least no bias against truth; but indifferent neutrality, in a work produced, as this is, in a spirit of loyal and affectionate remembrance, would be distasteful, discordant and impossible.'

C. R. W. Biggar.

Toronto,
Sept. 7, 1905.

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OLIVER MOWAT,
Barrister-at-Law.

(From a miniature of Sir Oliver Mowat, painted before his marriage as a present to his wife.)

Facing page 46. *1854.*

RT. HON. SIR JOHN A. MACDONALD,
First Premier of Canada.

Facing page 86. *1858.*

HON. GEORGE BROWN,
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Postmaster-General of Canada.

Facing page 134. *1864.*

HON. OLIVER MOWAT, Q.C., LL.D.,
Vice-Chancellor of Upper Canada.

CHAPTER I

FORBEARS

THE Mowats of Caithness-shire are among the oldest of Scottish families. So far as I have been able to ascertain, they came originally from Flint-shire in Wales to Hatton (near Turriff) in Aberdeen-shire, in the time of David I (1124-1153). From Aberdeen-shire one branch—the one in which we are interested in this sketch—migrated to the parish of Canisbay in Caithness-shire in the reign of King Robert Bruce (*circ.* 1306), for what reason only a Scotchman can conjecture. Caithness-shire was the most desolate part of North Britain, a dreary and almost treeless plain, separated from the rest of the island by the Caledonian Hills and by the deep morasses which formed the north-eastern boundary of the adjoining shire of Sutherland. 'The form of the shire is triangular, though its lines are warped and rudely curved by many capes and bays. Its northern shore fronts on the Arctic Ocean; its eastern coast lies open to all the wild storms of the North Sea.'[1] Swept by every Arctic wind and deluged almost daily by storm, sleet and fog from the North Atlantic and the German Ocean, it must have been, six hundred years ago, a most uninviting and inhospitable coast. Yet here

1306 — 1820

[1] Calder, *History of Caithness*, p. 1.

Chap. I William Mowat, about 1306, took up his abode in a (now-ruined) castle, built long before by a Danish pirate named Sweyn, and situated about eleven miles south of John O'Groat's House, in Canisbay, the northernmost parish on the mainland of Britain. Indeed the castle was not even built on the mainland, but on a detached portion of the cliff, and could be reached only by a precarious and narrow causeway, under which the surf of the German Ocean still continually boils and foams.[1] In this habitation—to which they gave the name of Buchollie, after the Aberdeenshire home of the family—our branch of the Mowats lived for three and a half centuries.

According to Burke's *Encyclopædia of Heraldry* (1844) their name in ancient charters was written 'De Monte Alto' ('of the high mountain'). According to the same authority they had the right to bear arms, and their crest was an oak tree growing out of a rock.

In 1316, during the reign of Robert Bruce, the name of William Mowat appears in the list of Scottish chiefs and nobles who sent a missive to the Pope formally maintaining the civil and political independence of Scotland. In 1410, William Mowat of Loscraggy, by a charter from James I, made over to his son John a wadset (mortgage) of the lands of Freswick and Aukingill in the parish of Canisbay. Nine years afterwards this

[1] On this bold rock, projecting here so steep,
Fearful and tottering o'er the rugged deep,
Buchollie Castle wizard-like appears,
The frightful ruin of a thousand years! — Calder.

John Mowat was killed by Thomas Mackay in the chapel of St. Duffus at Tain, whither he had fled for sanctuary. For this murder and for burning the chapel Mackay was apprehended by order of the King and hanged at Inverness. The patronage of the church at Canisbay belonged to the family, and in 1610 it is particularly recorded that the incumbent who entered upon the cure was presented by Mowat of Buchollie. 1306 — 1820

Calder, in his very interesting *History of Caithness*, says (p. 165) that when James Graham, the ill-fated Marquis of Montrose — celebrated by Professor Aytoun in that one of his well-known and stirring ballads which begins :

> 'Come hither, Evan Cameron, and stand beside my knee,'—

made his expedition into Scotland in 1644-1645 on behalf of King Charles I against his rebellious Scottish subjects :—

> 'Very few of the Caithness gentry embraced the cause of the King; but one Caithness proprietor, Mowat of Freswick in Canisbay (or, as he was commonly styled, Mowat of Buchollie), stood staunch to the King. When Montrose raised the royal standard in Caithness he joined him, and his name is mentioned among the officers who were killed on the side of King Charles at the battle of Alford in 1645.'

Magnus (born *circ.* 1624) was the last Mowat of Buchollie. In 1651 he married Jean, daughter of Alexander Sinclair of Latheron, and in 1661 he sold Freswick, including Buchollie Castle, to

Chap. I William Sinclair of Rattar.[1] The Rev. W. I. S. Falconer, B.D., late minister of the adjoining parish of Dunnet and an enthusiastic antiquarian, says that the Mowats had to part with their property in consequence of debts incurred in the cause of Charles I during the Civil War of 1642-1649.

David (son of Magnus) died in 1711 and is buried in Dunnet churchyard; but between him and his grandson, Oliver (born *circ.* 1746), there is a gap in the family history which it seems impossible now to fill up, owing to the destruction by fire of the parish registers from 1707 to 1747. This Oliver—grandson of David, and grandfather of the Oliver who is the subject of this sketch—was, about 1764, a tenant farmer in the parish of Canisbay. On May 14, 1769 (according to the parish register), he married Janet, daughter of John Bower and Margaret Nicolson. He died in 1823, his wife in 1837; and both are buried in Dunnet churchyard near the door of the church. They had issue, four sons and four daughters. The third of these sons, John, born May 12 and baptized May 13, 1791, was the father of Sir Oliver Mowat.

He must have had his early education in one of these old-fashioned parish schools so well described by the Rev. Donald Sage, M.A., some time minister of Resolis in Rosshire, in a gossipy book entitled *Memorabilia Domestica, or Parish Life in the North of Scotland.* It was a school which would be little approved by the educationists

[1] Henderson, *Caithness Family History*, p. 171.

of the twentieth century. Built of turf, thatched with straw, cold, ill-lighted and altogether uncomfortable; the walls destitute of maps; the dominie on a dais at one end of the room; the taws, the chief instrument of education, within easy reach of his hand; the scholars seated on benches at the wooden desks which extended down each side of the room. In the centre stood the stove, which in winter was lighted at six o'clock by the pauper scholar, who paid nothing for his tuition, but whose duty it was to light the schoolhouse fire and then to perambulate the parish, winding a horn at the house of each scholar. If the school-room was too cold he was soundly beaten. Sir Oliver has told me that the same thing existed in Upper Canada so late as 1826. 1791 — 1820

It was no doubt at such a school as this that John Mowat received his education; and, crude as was the method of teaching in Caithness a hundred years ago, I doubt that our much vaunted public school system of to-day produces better results in either education or character.

It was a time of stress and strain in Britain. 'The Great Shadow,' as Sir Conan Doyle has called him, was looming large over Europe. Men's hearts either quailed for fear or swelled with patriotism and love of adventure. Napoleon Bonaparte had entered Berlin, and—already master of Europe—threatened to invade Britain.

John Mowat's parents designed him for the Church, but the boy had no inclination toward that profession, and at sixteen he ran away to

Chap. I Thurso, took King George's shilling and enlisted. But when he came home and announced himself a soldier, the family refused to consent to his enlistment and the father bought his discharge.

Two years afterwards he ran away again and once more enlisted, this time in the Third Buffs (now the East Kent Regiment). With the Buffs he went to Spain, fought in the Peninsular campaign under Sir John Moore and the Duke of Wellington (then Sir Arthur Wellesley), was at the battles of Torres Vedras and Corunna, and soon rose to be a sergeant.

After Napoleon's fall and abdication in April, 1814, his battalion of the 'Old Buffs' was ordered out to Canada to take part in the struggle then going on between Great Britain and the United States. They arrived in Lower Canada on July 14, 1814, and on September 11 of that year played a gallant part in the disastrous action at Plattsburg.

Napoleon Bonaparte having escaped from Elba in March, 1815, and again become a menace to Europe, the Buffs, in June of that year, were ordered to Flanders; but Sergeant Mowat did not go with them. He had 'seen the land that it was good,' and had determined to become a Canadian. So, his term of service having expired, he received his discharge and a grant of 200 acres of land near Kingston, and settled down to the life of a peaceful colonist.

When John Mowat went off to the war in 1809 he left behind him in Caithness the girl who was to be his wife, Helen Levack, daughter of George

Levack, factor to the Traills of Castlehill and Rattar in the parish of Dunnet, which adjoins Canisbay on the west. Ten years she waited for him, and as soon as he had made a home for her in Kingston he wrote her to come out and join him. To a girl brought up in the remote and secluded shire of Caithness the thought of such a journey must have been appalling. To leave home and friends, and cross three thousand miles of sea to an unknown land, required no ordinary courage and devotion; yet she came, and came alone. 1819

The principal means of communication between Caithness and the outside world was then by means of small vessels which carried the produce of the herring fishery to Leith; and this was probably the first stage of Helen Levack's journey. The next would be by coach from Edinburgh to Glasgow, where she must await the uncertain sailing of a ship to Canada. The whole journey occupied three months. The voyage across the Atlantic lasted six weeks.

Mr. Mowat drove from Kingston to Montreal to meet her, and on her arrival there they were married by the Rev. John Somerville, Presbyterian minister, on June 16, 1819. Mr. (afterwards the Hon.) Peter McGill was Mr. Mowat's best man; and Mr. Stephens, subsequently manager of the Gore Bank, was one of the witnesses to the ceremony.

For their wedding trip the young couple drove with their own horses and carriage from Mon-

Chap. I treal to Kingston, along the bank of the St. Lawrence, taking three weeks to the journey and stopping often by the way at the houses of hospitable friends. It was the young Scotchwoman's first introduction to the land which her husband had chosen as their home; and to the end of her life it remained a vivid and delightful memory. She never spoke to her children of the winter voyage from Wick to Leith, or of the discomforts of the weary North Atlantic passage; but often, in after years, she recalled those first impressions of Canada: the long drive in the bright June weather, with the great river on one side, and, on the other, the primeval forests clad in their summer mantle of green, and broken here and there by farm clearings with their fruit trees all in blossom, and at each stopping place the warm welcome and often the familiar accent of her Scottish home. It was a wonderful change from the bleak and treeless moors of Caithness.

Of the marriage of John Mowat and Helen Levack were born five children,[1] the eldest of whom was Oliver Mowat, the subject of this sketch.

Mrs. Mowat died at Kingston on Dec. 8, 1873, aged 82. Writing of her recalls an incident of the last year of Sir Oliver's life. Sitting one summer afternoon with some members of his family on the verandah of Government House, Toronto, he told us that he had been asked to

[1] See Appendix I.

write a sketch of his mother for a forthcoming volume, *The Women of Canada*. He said he did not intend to do so, but had thought of giving the dates of her birth, marriage and death, with some motto expressing the idea that in most cases a woman has no history apart from that of her husband. One of those present suggested a quotation from Ruskin, looked it up and read it to Sir Oliver, who said 'That expresses my idea'; but he finally decided to send only the dates. 1873

The quotation runs thus :—'The best women are necessarily the most difficult to know. They are recognized chiefly in the happiness of their husbands and in the characters of their children."[1]

[1] *Sesame and Lilies.*

CHAPTER II

EARLY DAYS.

KINGSTON in 1820 was the most important town in Upper Canada. In 1801 it had received from Parliament its charter as a market town, while that of 'Little York' was not granted until 1814. In 1826 its population was 3,229, and that of York only 1,677; but five years later the population of York had increased to 5,179, while that of Kingston was only 3,671. The town prided itself on having been the seat of the first grammar school in Upper Canada, opened in 1786 under the Rev. Dr. Stuart, the first teacher as well as the first clergyman in this province. But the 'Limestone City' further claims the unique distinction that two of its citizens, Sir John A. Macdonald and the Hon. Alexander Mackenzie, have been Prime Ministers of Canada; three others, Sir Alexander Campbell, Sir George Kirkpatrick and Sir Oliver Mowat, Lieutenant-Governors of Ontario, and that the last of these, according to Morgan, 'enjoys the distinction of having had the longest continuous term of office as Premier ever accorded to any public man by the people of any province, colony or division of the British Empire.' 1820

Prior to 1841 we had no public school system in Upper Canada; but in places like Kingston

Chap. II this want was supplied by private schools. Members of the leading families of the town united to bring out from Britain schoolmasters of proved ability, and the names of some of these are well remembered even now.[1]

I have before me a list in Sir Oliver's handwriting of the names of his schoolmasters. Among them, those who seem to have impressed him most were the Rev. John Cruikshank, M.A., afterwards professor at the University of Aberdeen, and, later, minister of Turriff in Aberdeenshire, and Mr. Patrick McGregor,[2] of whom Sir Oliver speaks as 'my last and best regular teacher as regards Latin and mathematics.'

Among his school-fellows were the late Sir John A. Macdonald, Allan McLean, Maxwell Strange, the Rev. Walter Stennett, M.A. (afterwards Principal of Upper Canada College), his brothers, William and Alfred Stennett, and John Hillyard Cameron, whose father was then an officer in garrison at Kingston.,

On January 27, 1836, young Mowat, not yet 16 was articled to Mr. John A. Macdonald, his fellow-clerk being Mr. (afterwards Sir) Alexander Campbell.

[1] Most of them seem to have been Scotchmen, and several were, or afterwards became, ministers of the Church of Scotland.

[2] In a memorandum written in 1884, Sir Oliver says of him: 'Mr. McGregor afterwards went to the University of Edinburgh and there obtained the degree of M.A. He was the author (or editor) of several books, including a new translation of *Ossian*, published, I think, by the Highland Society of Edinburgh. Subsequently he became a barrister of this Province and practised in Toronto until his death.' In the same memorandum Sir Oliver says, 'I afterwards read Tacitus with Mr. Burton and took special lessons in French, penmanship and singing.'

Mr. Joseph Pope, C.M.G., in his very interesting *Memoirs of Sir John Macdonald*, says :— 1836

'On being called to the Bar, Mr. Macdonald opened an office in Kingston, and began the practice of law on his own account. In the first year of his profession there entered his office as student a lad destined to become in Ontario scarcely less eminent than himself. I refer to Mr. (now Sir) Oliver Mowat, the son of Mr. Macdonald's intimate personal and political friend, Mr. John Mowat of Kingston. Oliver Mowat studied law four years with Mr. Macdonald, leaving his office in 1840. About the same time, another youth, likewise destined to achieve more than a local celebrity, applied for admission to the office—Mr. (subsequently Sir) Alexander Campbell, who began his studies with Mr. Cassidy, and, after that gentleman's death, completed them with Mr. Macdonald. Few circumstances in our political history have been more dwelt upon than this remarkable association, and few circumstances are more worthy of remark. A young man, barely twenty-one, without any special advantages of birth or education, opens a law office in Kingston, at that time a place of less than five thousand inhabitants. Two lads come to him to study law. The three work together for a few years. They afterwards go into politics. One drifts away from the other two, who remain in close association. After the lapse of twenty-five years they meet again at the Executive Council Board, members of

Chap. II

the same Administration. Another twenty-five years roll by, and the principal is Prime Minister of Canada, while one of the students is Lieutenant-Governor of the great Province of Ontario, the other his chief adviser, and all three decorated by Her Majesty for distinguished services to the State. I venture to doubt whether the records of the British Empire furnish a parallel to this extraordinary coincidence.'

The friendly relations between Mr. John A. Macdonald and Mr. Mowat continued unimpaired for more than twenty years; but they were somewhat affected when Mr. Mowat entered Parliament in January, 1858, as an opponent of the Macdonald-Cartier Government, and still more seriously a few months later by Mr. Macdonald's conduct toward the Brown-Dorion Ministry.

With Mr. Campbell, on the other hand, Mr. Mowat remained on terms of close and intimate friendship until Sir Alexander's death at Government House, Toronto (May 24, 1892). The careers of the two fellow-students have several points of resemblance. Both were Scotchmen by origin, but not by birth; both were of the same profession and practised for a time in the same town; both became Benchers of the Law Society of Upper Canada; together they were members of the great Coalition Cabinet of 1864, and of the Quebec Conference which settled the terms of Confederation; each was in turn Minister of Justice and leader of the Senate of Canada, and each died Lieutenant-Governor of the Province of Ontario.

STUDENT-AT-LAW.

In Michaelmas Term (November, 1836), 'Oliver Mowat, Junior,'[1] having filed his petition for admission to the Law Society of Upper Canada, came to Toronto to pass his preliminary examination as a student-at-law. On the day of his arrival he wrote to his mother : 1836

'Toronto, Nov. 3, 1836.

'As I do not intend to make a rough draft of this letter and copy it, but to write off-hand, be not surprised at blunders of whatever kind.

'It was past 12 o'c. to-day when I arrived here, so that three days and a half still intervene before that fateful day when I must appear before the august Benchers of the Law Society of Upper Canada. George has no doubt told you that the "St. George" did not start for more than an hour and a half after I went on board. In about the same time afterwards I felt all the horrors of sea-sickness; but, tho' I felt them, I am glad to say that I did not exhibit them. However, it made me very dull, and I continued so until I set my feet once more on *terra firma*.

'There were on board eight M.P.P.'s—at least so Mr. Stewart told me.[2] I heard the names only of Mr. Ogle R. Gowan,[3] Mr. Manahan,[4] Mr. Æneas Macdonnell,[5] and Mr. Malloch.[6]

[1] Oliver Mowat, a younger brother of Mr. John Mowat, was at this time a resident of Kingston. His name appears in the Militia List of 1837-8 as an ensign in the second Frontenac battalion of militia.

[2] This was doubtless the Hon. T. A. Stewart, then member of the Legislative Council for the Peterborough District, whose life has been so charmingly told by his wife in a book entitled *Our Forest Home*.

[3] M.P.P. for Leeds.

[4] M.P.P. for Kingston.

[5] M.P.P. for Stormont.

[6] M.P.P. for Carleton.

Chap. II

'The British Consul of New York was also on board, and talked nearly the whole time of the faults in the wharves, piers, canals, etc., of Canada. He exhibited and read to an—I was going to say admiring, but must content myself by saying—attentive audience a magnificent scheme which, if adopted, was to insure the eternal prosperity of the colony. Mr. Manahan pointed out to him that he had omitted all reference to the River Trent and the Bay of Quinté, which called down upon him the consul's maledictions. The member of whom I thought most highly was Mr. Ogle R. Gowan. He somewhat resembles an old teacher of mine whom I much esteem. I must not forget to tell you that Mr. Malloch, when he heard who I was, gave me an introduction to Mr. Stewart, who most kindly offered me a ticket of admission into the Legislative Council Chamber to hear the Governor's speech. Of course I expressed my thanks to him as well as such a blunt fellow as I could do. It was on account of my father's previous good offices to him and to his brother, for whom, I believe, my father secured the solicitorship of the Commercial Bank at Brockville.

'Neither must I forget to tell you that I have been at the Osgoode Hall and have learned that I have been proposed. The papers, however, which were sent by mail, have not yet been received, so that I am here before they are.

'I forgot to say that on the voyage up I slept on chairs, as did also Mr. Stewart.'

A few days afterwards he passed the examination successfully, coming out at the head of the junior class, the other members of which were the late Chief Justice of Ontario (Sir George W. Burton), Henry Eccles, Samuel Sherwood, Robert Armour and Erastus B. Raymond, all of them afterwards well known in the profession. A letter to Mr. John Mowat, written on the day following the examination by the Hon. John S. Cartwright, K.C., M.P.P., then a Bencher of the Law Society, must have been gratifying to the parents of the lad: 1836

'Toronto, Nov. 14, 1836.

'I am happy to inform you that your son passed a very creditable examination yesterday. I regret that it was not in my power to be present, but I spoke to several of my friends, who were kind enough to go. I hope and trust that both you and Mrs. Mowat will derive great satisfaction from this circumstance, and that his future conduct will give you that comfort which your strict attention to his present and future welfare so justly merits.'

In this year were heard the first mutterings of the disaffection which culminated a few months later in Mackenzie's *emeute*—it can scarcely be dignified by the title of a rebellion—and young Oliver Mowat became a member of the first battalion of Frontenac militia, in which his father was a lieutenant. He served therein as a private until 1839, when he was gazetted ensign.

Chap. II On Good Friday, 1840, an attempt was made by some miscreant to blow up with gunpowder the monument which had been erected at Queenston Heights to Sir Isaac Brock and Lieut.-Colonel Macdonnell. In the following July a large meeting was held on this spot, to make arrangements for the erection of a new monument. It was attended by militia officers and leading citizens from all parts of Upper Canada; and I find that on that occasion the colours of the first Frontenac battalion were carried by 'Lieut. Oliver Mowat, Jr.'; but I do not know when he received his lieutenant's commission.

After spending four years in the office of Mr. Macdonald at Kingston, Mr. Mowat came to Toronto in November, 1840, to keep his three remaining terms as a student-at-law. His articles were assigned to Mr. Robert Easton Burns, then a partner of Mr. James McGill Strachan, a son of the first Bishop of Toronto. Among his fellow-students in the office of Strachan & Burns were the late John Beverley Robinson (afterwards Lieutenant-Governor of Ontario) and the late Stephen Maule Jarvis. He boarded with a Mr. Osborne, then superintendent of the George Street Methodist Sunday School, and at one of the annual gatherings of this Sunday School he made his first public speech. Among the other speakers were Mr. (after Chief Justice) Hagarty and Mr. Alderman Dixon.

During his absence from Kingston (1840-1841), though fully occupied all day with the multifar-

ious duties of managing clerk in a large law-office, and having to prepare in the evenings for his final examination, the young man found time to write at least once a week to his father or his mother, and also—though at less frequent intervals—to his brothers John and George, and to his sisters Catherine and Jessie. Only a few of these letters have been preserved, chiefly those written to John (afterwards Professor) Mowat, then a school-boy in Kingston. They contain little about himself, but much about those to whom he is writing, and they indicate a wealth of family affection too seldom found in this day; 'heart affluence in discursive talk from household fountains never dry.' The writer had a wonderful faculty—which he kept to the end of his life—for sympathetic interest in the affairs of others, and (as a friend has expressed it) 'a perfect passion for being of service.' Some extracts may be interesting:— 1840

'Nov. 12, 1840.

To his brother John :

'You ask me about the standing of the different lawyers here. I was extremely disappointed on seeing and hearing the "great" Henry John Boulton (as one would suppose him to be, from the way in which he is commonly spoken of). His appearance is not prepossessing; his voice is not pleasant; his language is frequently unclassical, and his style diffuse and rambling. His greatness, if he has any, must be chiefly in his legal knowledge. There is a young barrister here

Chap. II named Cameron, of whom you have probably heard. He is as pleasing a speaker as any I have yet listened to. He already ranks highest among barristers of his own standing, and is considered the most rising person in the profession."[1]

'Among the Toronto law students that I have met with, a son of John Ewart, Esq., a retired merchant and staunch "kirker," is decidedly the most sensible and studious. His knowledge of the law is greater than that of many practitioners. He is one term—*i.e.*, three months—my junior as a student. I spoke to him about a debating society, and he forthwith set himself to procure the renewal of one that formerly existed here and with which he had been connected. Matters have so far advanced already that a preparatory meeting of the members is to be held on Monday next. . . . . The number of students who are keeping the present term is no less than forty. I have heard it calculated that about three hundred have been admitted into the Law Society within the last four years as students. Verily, at this rate every man, woman and child will soon become their own lawyer.'

Feb. 1, 1841.

'Dearly beloved Jack :

'With all the diffidence you constantly express as to your capacity for writing letters, the only

[1] When these words were written, Mr. John Hillyard Cameron had been only two years at the Bar, of which, twenty years later, he was the acknowledged leader.

respect in which any of them appear to be faulty is in that of calligraphy. Of late I have been obliged sometimes to labour very hard to read your sentences; and some words resisted all my efforts. Avoid this. 1841

'As to the Eton grammar : I do not recollect that you asked me to get one for you. If you had asked me I might have got it and sent it before the steamboats stopped running. If you want one purchased for you within a week or ten days I shall probably be able to send it, as some Kingston lawyers or students will probably be here during term and will return about that time.'[1]

In the General Election of 1841 the candidates for the City of Toronto (which then returned three members) were Messrs. John Henry Dunn, Isaac Buchanan, Henry Sherwood and George Munro. Mr. Mowat writes :—

'Mar. 13, 1841.

'Mr. Sherwood is perhaps an abler man than Mr. Buchanan; but Mr. Dunn, again, is abler than Mr. Munro.

'I was present at the nomination when the candidates made their speeches. The crowd was large and very disorderly. I took up my position on the outskirts; but, by the time the speeches began, I found myself immovably wedged in almost the very thickest of the crowd. The silly, senseless, ill-natured conduct of the people

[1] The postage of a letter from Toronto to Kingston then was 9d. (18c.) for each quarter of an ounce; there was no book post.

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prevented me (and the great majority of them also) from hearing one-half of what was said. . . . Each party has a very fine band, the musicians occupying two double sleighs joined together and drawn by four horses. The musicians are decorated with a profusion of ribbons, and the horses with ribbons and flags. They parade the streets almost every day. Of course there is the inevitable quantity of drunkenness and shouting.'

'March 31, 1841.

'The assizes are going on here, the Chief Justice (Robinson) presiding. I have been present most of the time, and have heard several of the Toronto lawyers. I find that they do not in general show any very tremendous superiority over those we have in Kingston. Next to the Attorney-General (Draper), and the Solicitor-General (Robert Baldwin), who, with Mr. Sherwood and Mr. Blake are leaders of the Bar, the rest appear to me to be comparatively "small fry." The last named is a man of fine talents and a good lawyer. He is also the best of the three leading Chancery counsel, the other two being Mr. Esten (an English barrister) and Mr. Burns (my principal).'

Mr. Mowat preserved all his life more than a score of letters received at this time from his friend, Mr. Alexander Campbell; and they illustrate, better than any words of mine could do, those traits of character which made Sir Alexander so generally beloved throughout the Bay

of Quinté district, even by those who differed from him in political opinions. Here are a few extracts:— 1840-1

'November 23, 1840.

'Our meetings at the M. I. class are but thinly attended. Some ascribe it to the change of night, but I am more inclined to believe that the non-attendance of members proceeds from their knowing that the brightest planet in our system has fallen, or rather has transferred its beams from ours to a more favoured region. However, though "on the setting of that bright occidental star" (O. M.) many who wished not well to our Zion thought that our society would fall through; it still exists, though in diminished splendour.'

'March 26, 1841.

'I am sorry to see by a paragraph in your letter that your spirits are not good, that you are dreaming of your "never being anybody"; *dreaming*, I say, because it will pass as a dream, and you will wake to the realization that it is like the morning mist, and to the consciousness of your own powers. Some of the most eminent characters have felt this before you, and, like them, you will find that your anticipations are as incorrect as they are painful. I feel confident that if blessed with health *I shall be somebody.* I fully enjoy "the pleasures of hope" and look forward to bright days when my name shall have a place among men. I am determined that my own exertions, in aid of any ability, however

Chap. II small, with which God may have blessed me, shall not be wanting. Perhaps you will term me a vain, conceited ass; but such are my feelings, and my only motive in expressing them to you is to endeavour to lead you to such a state of mind as would induce you to say, "If *he* feels so confident, surely *I*, possessing greater natural abilities and much more acquired knowledge, may feel doubly so." At any rate, even if my hope is unfounded and my anticipations should prove delusive, I may, at least, enjoy them at present; and that is much preferable to your plan of settling down in the belief that you will "never be anybody," which not only distresses you at present but damps and lessens all your exertions, and, if continued, will most assuredly produce the result you fear. So, "away with melancholy"!'

'To the Honourable Oliver Mowat,
Vice-Chancellor of Upper Canada, 1861.'[1]

'April 19, 1841.

'You inform me that you are not over studious. Now on inquiry I find that you do nothing but study, work and eat, and (of course) sleep. *Let me tell you this won't do, Oliver.* You cannot stand it, however desirous you may be to make the best use of your time. You want a little of my wildness. I look forward with infinite pleasure to my approaching visit (D.V.) to Toronto, and not merely to Toronto but also to a certain pretty spot called ——— where

[1] The prediction was verified in 1864.

there are attractions for me which, with your being at Toronto, make a very pleasant anticipation and one which I trust will be realized. 1885

'I think, my dear Oliver, when you get thus far in my epistle you will begin to think of framing, or rather "composing"—that is the word—a declaration in case for deceit against me. However I shall plead "*non damnificatus*," and I think I shall beat you on the issue in fact.'

And that their friendship continued unimpaired more than forty years later, appears from the following letter :—

April 15, 1885.

'My dear Oliver :

'Thank you very much for your kind note. I do not know anything of the kind which gives me so much and such honest pleasure as having been able to retain all my life long the friendship of those to whom I was attached in "life's morning march." You and I have been friends ever since you used to follow me in our rides about Kingston in 1839-40 with such gallant spirit over fallen trees which you could but indistinctly see. That you should, ten years later, have conceived so promising an opinion of my future only shows that you were, as you have always been, full of kindly impulses and warm friendship; and if I have in any way come near the attainment of what you predicted for me, it seems to me a result fairly attributable to propitious circumstances rather than to merit. You and I have, perhaps, run a not unequal race in the eyes

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of the world; but I know, and you know, on whose side the real desert has lain. I hope you may have many years of happiness and repose before you yet. For my part I am seeking an opportunity to release myself from labour to which I am becoming unequal; and I hope ere long to establish myself in some quiet street in Toronto, and settle down into what I hope will be a tranquil old age. But this for the present between ourselves.'

Two years afterward Sir Alexander was appointed Lieutenant-Governor of Ontario; and no one rejoiced thereat more sincerely than his old friend and fellow student, who thus became his Prime Minister.

In May, 1841, Lord Sydenham transferred the seat of Government from Toronto to Kingston, and on June 15, 1841, the Court of Chancery followed. The reason for this is given by Mr. Mowat in a letter to his mother dated April 20, 1841:

'Every day seems to increase the probability that in a couple of months I shall be again a resident beneath the parental roof. Everybody who has anything to do with the Court of Chancery is looking forward to its immediate removal to "the metropolis." Some of the officers of the Court have already sent down to have houses taken for them, if that can be done forthwith; and several of the legal "houses," to use a commercial term, or legal "partnerships," to use a more common one, are forming arrangements

for the immediate removal of one or more partners to "the capital." The reason given for so early a step is the intention of Lord Sydenham to make the Vice-Chancellor Speaker of the Legislative Council. Such an appointment seems very likely. The ultra-Toryism of all the Judges of the Queen's Bench will certainly prevent any of them from being thought of for a moment,—and the Vice-Chancellor is the only other legal dignitary in Upper Canada upon whom the office could properly be conferred. Also, he is a supporter of the Governor-General's policy. Among the names that have been mentioned in the newspapers for Legislative Councillors, I should think none would be more competent than he. Upon the whole, then, I shall probably have the happiness of returning to Kingston four months or so earlier than I expected, and the further happiness of casting down the elder of my brethren at home from the grand viziership which he has occupied for the last six months. 1841

'Would you believe it, I have already been casting about in my mind how on earth I shall be able to pack my things. There must be in all of you an extraordinary knack for packing. Every article I took up with me I believe you managed to put into my trunks. Now both of them are full, and yet there are my cloak, my mohair coat (which I use in my morning rides), a hat or two, some caps, two pairs of gloves (barring the pair which I always wear), my olive coat, a shawl, my brushes, combs and shaving

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apparatus, my tin box (or rather George's), my writing affairs, pens, papers, wrappers, stamps, etc., and all my books, which are certainly not few in number. All these are now out of my trunks and scattered about my rooms, and it is giving me a great deal of thought how I shall ever contrive to get them in again.

'Mr. Burns left Toronto on Monday and is to be away for a month. By this event the whole burden of the Chancery business in the very celebrated and extensive house of Messrs. Strachan & Burns, barristers, solicitors, attorneys, notaries, etc., has fallen upon the shoulders of your loving son. I am not sorry; as, after all, though I have to work a little harder it gives me a better chance.'

He did not, however, leave Toronto until after Easter Term (June, 1841), and thenceforward, though his service under articles had been completed in January, he remained with Mr. Burns, who had migrated to Kingston with the Court of Chancery.

On September 4, 1841, Lord Sydenham was thrown from his horse, an accident from the result of which he died on September 19. Mr. Mowat writes to his brother John :—

'Kingston, Sept. 18, 1841.

'His Excellency is not recovering from the effects of his late accident, though his case is not yet considered hopeless. The Houses were not prorogued yesterday, as it was announced that

they would be. A scene took place in the As- 1841
sembly on Thursday night. You perhaps know that it is the exclusive right of the Commons to originate money Bills, and that the Upper House have no right to make even an amendment in any Bills of that kind. They must either pass or reject such a Bill as they receive it. Well, the Assembly had passed a Bill, giving £1,000 a year to their Speaker and half that sum to the Speaker of the Legislative Council. The Council amended it by making the salary of their Speaker the same as that of the Speaker of the other House, and sent the Bill as amended to the Commons for concurrence. The members of the latter body got uproarious and (literally) kicked the Bill out of the Chamber, giving it no rest till it had reached the foot of the stairs. After patriotically denouncing the breach of privilege of which the "Lords" had been guilty, they sent for the Bill from its humble resting-place, and, having struck out the obnoxious amendment, sent it up again to the Council, which passed it as it stood.

'I dare say you have heard of the Address that passed by a majority of five, recommending the Legislature to be called alternately at Toronto and Quebec. The Sheriff is raging. He has been actively engaged for some time in getting up a ball to the members, and he swears that if he had known they were about to pass such an Address he would have taken good care not to give them a ball.

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'The mechanics have determined to get up a political debating club, unconnected with the Institute. As all of them here who can make a speech, except ——— are Radicals, I am afraid much evil may arise from this club and if I could prevent its formation I would do so.'

In Oct., 1841, Mr. Mowat became a member of the St. Andrew's Society, and continued to belong to it until his death (1903).

Queen's College opened in 1841 with two professors, viz.: the Rev. Dr. Liddell (Principal), and Prof. Campbell. On Feb. 4, 1842, Mr. Mowat writes :—

'The trustees[1] have taken the castle of the Archdeacon [the Ven. George O'Kill Stuart], at a rent of £275. It will probably answer in the meantime for the residence of the professors and their families, as well as for the other purposes of the College. . . . Dr. Liddell was last heard of at Cobourg. He has been getting a pretty taste of Canadian comforts. In his travels he found it necessary to cross some river —the Humber, I think—on foot, the ice being too weak to bear horses, and the water a foot deep. Next, his course lay through a muddy road, the mud of nearly equal depth with the water on the ice. In this condition he reached a house or tavern, where there was no fire for some time and no bed at all, so that he had to pass the night on the floor in the bar-room, all wet and comfortless as he was. I give you this as I got it.'

[1] Mr. John Mowat was one of them.

CHAPTER III

BARRISTER—QUEEN'S COUNSEL.

IN Michaelmas Term (Nov. 5, 1841) Mr. Mowat was admitted as an attorney and called to the Bar of Upper Canada, the other barristers of that Term being Messrs. W. J. Fitzgerald, H. H. Hopkins and George A. Philpotts, the last of whom was afterwards Judge of the County Court of the County of York. 1841

He at once entered into partnership with his late principal; and the firm of Burns & Mowat practised in Kingston until November, 1842, when the Court of Chancery returned—and they returned with it—to Toronto, which was thenceforth Mr. Mowat's home.

The Court of Chancery in those days consisted of a single Judge, the office of Chancellor being held *ex-officio* by the Governor-General, and the actual work of the Court being performed by a Judge who was styled Vice-Chancellor.

From 1837 to 1849 this office was held by the Hon. Robert Sympson Jameson, of whom an interesting sketch is given by the late D. B. Read, K.C., in his *Lives of the Judges of Upper Canada.*

'He was,' says Mr. Read, 'a model of gentlemanly conduct, but a great stickler for precedents; not given to striking out new paths, or venturing to establish any principle unfortified by previous

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authority. If by any possibility a reference to even a dictum of Lord Eldon's could be found, bearing, however remotely upon the point in question, counsel, knowing Mr. Jameson's partiality for Lord Eldon—at whose feet he had sat before leaving England—eagerly seized upon it as a precedent which ought to sway, and usually did sway, the judicial (?) mind of the Vice-Chancellor.'

The Chancery Bar of those days was a strong one,—'too strong,' says Mr. Read, 'for the Vice-Chancellor.' Among its leading members were William Hume Blake (afterwards the first Chancellor of Upper Canada), James C. P. Esten (afterwards Vice-Chancellor), Robert Easton Burns (afterwards Mr. Justice Burns), John Hillyard Cameron, Henry Eccles, Robert John Turner (afterwards Master in Chancery), and (later) Robert Baldwin Sullivan and Philip VanKoughnet. It was before this Court that Mr. Mowat chiefly practised. Much of his work consisted of cases in bankruptcy; and I have been told that his thorough knowledge of book-keeping and of mercantile affairs proved most valuable in dealing with cases of this class.

Shortly after their return to Toronto the firm of Burns & Mowat was strengthened by the accession thereto of Mr. Philip VanKoughnet (afterwards Chancellor of Upper Canada), of whom Mr. Read says in his *Lives of the Judges* (p. 317):

'He was not only a day-worker but a night-worker also, he and Mr. Mowat frequently giving up a good part of the night as well as the whole

day to the business of their clients. The practice of the firm was largely in equity, and in those days of long, voluminous bills, and equally long, voluminous answers, with interrogatories and cross-interrogatories—now happily abolished—those who wished to practise their profession successfully had to devote their whole time to the work. It must be remembered, too, that those were not the days of stenographers or typewriters, so that the manual labour of an office was much greater than it is now. Messrs. Burns, Mowat & VanKoughnet were in partnership for a considerable time, their office being a little west of McDonald's Hotel, which then occupied the site of the Romaine Buildings on King Street. As both Mr. Mowat and I boarded at McDonald's, I had a knowledge of his retirement almost every evening from the hotel to his office to do night work there, which seemed to occupy him quite as much as his day's labours.' 1842-50

If it be a sound principle—as I once heard a very distinguished lawyer assert—that a legal firm should consist of men of different political and religious opinions, different temperaments and different aptitudes, then the firm of Burns, Mowat & VanKoughnet was well equipped.

The senior partner, Robert Easton Burns (afterwards Mr. Justice Burns), had been a master in the Niagara Grammar School, of which his father was for many years the principal. He was not a brilliant man; but he possessed unlimited energy and industry and went thoroughly

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to the bottom of every case with which he had to do. He was the 'office man' of the firm, and I have heard Sir Oliver say that he had never known Mr. Burns's superior as a chamber lawyer.

Philip Michael Matthew Scott VanKoughnet was of a very different type. The son of Philip VanKoughnet of Cornwall, Colonel of the 2nd Stormont Regiment of Upper Canadian Militia, an Alsatian by origin and a U. E. Loyalist—for the family left the United States in 1783 rather than take the oath of allegiance to the new Republic—he was one of the brightest stars in that galaxy of brilliant men, whose names are still remembered with reverence and pride by the Bar of a generation now passing away. Quick in forming his judgements, clear (and sometimes *brusque*) in expressing them, genial to his friends, but with a power of sarcasm which made him a terror to stupid people, generous almost to a fault, and of a most vivacious and humorous spirit, he had all the defects of his qualities. He died in 1869 at the age of forty-seven, having then been Chancellor of Upper Canada and Ontario for more than seven years.

Mr. Mowat, then one of the Vice-Chancellors, was holding the Sittings at Cobourg at the time; and this is the tribute which he paid to his former partner, his colleague on the Bench and his life-long friend :—

'As a Judge he was most conscientious,—he had a profound love of justice and an exalted sense of judicial duty. In the discharge of his

office he acted without fear, favour or affection, if any Judge ever did. He was, from the first, prompt in deciding; and that he was generally accurate as well as prompt is shewn by the fact that his decrees were, I believe, as seldom appealed from as those of any Judge we ever had. Whatever those politically opposed to him may have thought of the measures or proceedings of the Government of which he formed part, no body ever doubted the purity of his motives or the soundness of his patriotism. He loved this Canada of ours, which was the land of his birth, and he earnestly desired to promote its interests.' 1844-5

In 1845 the law students in the office of Burns, Mowat & VanKoughnet were, John Crickmore, William Draper (son of the Chief Justice), James Kernaghan, Oliver Springer (afterwards Judge Springer of Hamilton), Thomas A. McLean (son of Chief Justice McLean and afterwards Registrar at Battleford, N.W.T.), and George Morphy. The first and last of them became well known lawyers in Toronto.

Among the letters of this period is one to his mother, dated October 9, 1844, in which, after speaking of the disruption of the Scottish Church in Canada, and the secession from St. Andrew's congregation of many of its leading members, including his future father-in-law, Mr. John Ewart, he says :—

'However, the election excitement has thrown the Church excitement completely into the shade. Four—if not more—political meetings take place

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every night here, one for each candidate. People seem to have thoughts for nothing else. Mr. Boulton[1] has the support of all the mechanics, and will, I think, be elected. It is not improbable that his colleague will be Mr. Dunn.[2] This will arise from the division which has taken place in the Conservative ranks,—for Toronto is decidedly a Conservative town. I believe I have a vote this time, but I do not intend to give it. I have, up to the present, been too idle to study politics; and until I have studied them I am resolved not to vote. More than one person has told me lately that such a resolution is absurd. One tells me that I surely cannot hesitate about giving my vote in support of British connexion. Another hands me a card with an address on one side (which I have not read) and on the other side the words, "Your vote and interest is (*sic*) respectfully solicited for the Honourable J. H. Dunn." My real impression is that the difference of avowed principles between the two parties is all moonshine, and that British connexion is no more in danger just now from one party than from the other.

'I am learning to rise earlier now, and am in the saddle every morning by half-past six, though it is sore against my will. My mohair coat keeps me warm on the coldest mornings which I have yet experienced, but my nose, un-

[1] William Henry Boulton of 'The Grange,' who represented Toronto during the ten years from Nov., 1844, to Aug., 1854.

[2] Mr. Mowat's forecast in this case proved to be incorrect. The Hon. John Henry Dunn, who had represented Toronto in the previous Parliament, was defeated in this election by the Hon. Henry Sherwood.

fortunate member, frequently gives me a good deal of trouble by assuming a dissipated appearance, hardly professional, I am afraid; though on the other hand, a red nose has the sanction of most of Her Majesty's Attorneys and Solicitors-General for Upper Canada, and it is satisfactory to find for such a defect, the example and sanction of the great ones of the land.' 1844

'Oct. 28, 1844.

'I heard a piece of news to-day which comes from a source that makes it not perfectly idle to repeat, though it seems too good to be true, viz.: that the present Cabinet had resolved to have His Honour[1] removed from his present office, and that for this purpose they are going to make the Speakership of the Legislative Council a permanent office and confer it upon him; or, failing that, they intend to pension him off. Mr. Draper would be his successor, if the removal takes place now. We are all trying to convince ourselves, therefore, that there is something in it. If it should be true, the present Cabinet will have conferred one benefit on the country, of the full amount of which none but those practising in Chancery can form any adequate idea.'

'Dec. 9, 1844.

'I am looking anxiously for winter fairly setting in, for I believe my going down to Kingston this Christmas must depend on the state of the

[1] V. C. Jameson.

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weather and the roads. If the sleighing be good, I do not know anything that will detain me here. If it be not good, I shall probably have to spend my Christmas in Toronto, and look forward to an early visit home in the spring to compensate for the winter's deprivation.'

'Dec. 30, 1844.

'In two days more we shall have the New Year, and to me it will, I suppose, be a New Year spent in Toronto, as up to this moment there is no snow on the ground. After writing a letter to John some days ago, I was on the point of changing my mind and going down once again on wheels. Further deliberation, however, brought me back to my original intention. The cold, the want of sleep, the fatigue and the bad and irregular meals I have now twice found very formidable enemies to a winter trip in a wagon, and I am not quite sure that I could endure them now as well as I did then.[!] I have been feeling very great disappointment at the loss of my winter trip home, and at having to spend the Christmas week in solitude and among strangers, instead of spending it in social and affectionate converse with you all at home. I am conscious that the only thing that saves me from irremediable home-sickness is the constant occupation which fills up all my time.'

'May 14, 1845.

'The election of elders [1] took place on Monday. The elected were: Judge McLean, the Rev.

[1] Of St. Andrew's Church.

Mr. Murray, Mr. Campbell—formerly proprietor of the North American Hotel, and, I believe, the oldest man in the congregation—Mr. John Cameron of the Bank, Dr. Telfer and Mr. Sinclair, formerly colour-sergeant of the 79th Regiment.' 1844-6

Mr. Mowat was repeatedly urged to become an elder, but always refused, on the ground that he had not sufficiently studied theology to accept *ex animo* all the statements of the Westminster Confession of Faith.

Soon after taking up his residence in Toronto Mr. Mowat became intimate with the family of the late John Ewart, Esq., a well-known builder and contractor, who erected the old Parliament Buildings on Front Street, the Lunatic Asylum on Queen Street West, and the 'Coffin Block' at the corner of Wellington and Church streets. In this household he found the helpmate of his life, and wooed and won the youngest daughter of the house, 'the beautiful Miss Ewart,' as she was commonly called. They were married on May 19, 1846, by the Rev. Dr. Jennings, Minister of St. Andrew's Church; and they lived, as the Prayer Book says, 'in perfect love and peace together' for forty-seven years, until her death on March 13, 1893.

Here is an extract from one of the many letters received by Sir Oliver at the time. It is from a friend who had known Lady Mowat during her early married life :—

'Guelph, May 14, 1893.

'Lady Mowat was to me in my girlhood the very ideal of beautiful womanhood, and now,

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after many years, the thought of her sweetly gentle grace has only served to deepen the veneration I then felt for her beauty as well as for her loveliness of heart and mind.'

In January, 1850, the firm of Burns, Mowat & VanKoughnet was dissolved, by the appointment of Mr. Burns to be a Judge of the Court of Queen's Bench for Upper Canada. Mr. Mowat then formed a partnership with Mr. Thomas Ewart (his brother-in-law), and Mr. John Helliwell (afterwards for many years solicitor for the Bank of Toronto), under the firm name of Mowat, Ewart & Helliwell; but this was brought to an end by the untimely death of Mr. Ewart in Madeira on March 21, 1851, at the early age of thirty-two. For the next five years Mr. Mowat practised alone, having his chambers in the Commercial Buildings, at the corner of Yonge Street and King Street, where the Dominion Bank now stands. That his business soon became remunerative may be gathered from the following letter to his brother John :—

'October 8, 1853.

'I have had to employ two more "hands" (and heads) in my office and my business is still in arrear, notwithstanding my own industry and that of my five clerks. One of my former partners owes me between £300 and £400, the balance due when we dissolved partnership. I have determined to ask as a personal favour that you would not object to my turning it over to you. Indeed, as a prosperous elder brother,

I ventured before asking to act as if I had your permission. I proposed to ——— that he should give me a mortgage to you on some of his properties, principal payable at a future date, interest payable half-yearly. To this he agreed, and the document will be executed when circuit business is over. I hoped to be able to enclose the mortgage before now, but a little time may elapse before its execution, and it may have to lie in the Registry Office some weeks afterwards, because in these days of land speculation its time for registration will not have come. I have thought it right to inform you of what is coming, and I do hope that in what I have ventured upon without your concurrence you will not think me presuming. If I had not recollected this item of my possessions, and the greater facility I would have in making it available thus than by urging payment to myself, I should have looked round for some other investment to place in your name. And why not ? Am I not an elder brother ? Hasn't an elder brother some rights in such a matter towards the younger members of his family ? If my father were in a position as easily to transfer as much or more to a son whose profession prevents him from accumulating property, except with exceeding slowness as well as self-denial, could there be any hesitation in accepting the gift; and why should the pleasure my father would have had in that case be withheld, or even reluctantly permitted to me as things actually stand ? A good 1853

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Providence has smiled on me: health, a good wife, fine children, agreeable friends, a profession which I like, have been some of the blessings of my lot. I have lived, ever since I entered upon professional life, in elegant comfort, and am, notwithstanding the expense of this and everything else, worth £5,000 or more. My life is insured for £2,000. My income counts tens for your units, and instead of diminishing or becoming more precarious, it seems to be tending upwards and becoming more stable with every year. Why then can it require a single instant's consideration whether an elder brother so situated may not have the satisfaction of adding a few hundreds in any way he judges best to the savings of a younger brother? I have written this long letter that you may not say a single word against what I have determined upon, and that, regarding the thing in the light I have mentioned, you may acquiesce in it as a thing of course, without feeling that there is anything more in it than in the offering of a barrel of apples or a fat turkey to you on the part of your parishioners.'

'July 14, 1854.

To his Father :—

'I have been making up my accounts for the past year, including costs of suits now in progress, and to my amazement the bills for the year (July, 1853, to July 1, 1854), after paying office expenses—but with ample allowance for all doubtful debts—is £3,500. I was almost afraid that

I must have somewhere added in the year of Our Lord. It is the more wonderful because I do not see where it has all come from. I suppose the debts owing to me must be larger than I had any notion of.' 1853-4

In February, 1856, he formed a new partnership, taking in Mr. John Roaf and Mr. William Davis; but this lasted only till September, 1857. In 1858, Mr. Alexander McNabb (afterwards Police Magistrate of Toronto) became his partner for a year or more, and in 1859 Mr. Mowat asked Mr. James Maclennan, then practising in Hamilton, to become his partner. The firm of Mowat & Maclennan was formed in January, 1860, and the two senior partners remained together—except while Mr. Mowat was Vice-Chancellor—until Mr. Maclennan became, in 1888, a Judge of the Court of Appeal for Ontario.

Yet, busy as he was with professional work, Mr. Mowat nevertheless found time for a great deal of reading, chiefly of history, biography and theology; and he accumulated an extensive library of general literature such as very few Canadian lawyers of that day possessed. In 1847 he became a director of the Upper Canada Bible Society; and in 1859 he was elected one of its Vice-Presidents, an office which he held until the time of his death.

The Upper Canada Common Schools Act of 1850 contained a clause authorizing the ratepayers of any school section to determine at their annual meeting whether or not the school should be a free school, *i.e.*, whether it should be supported

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by fees from the parents of the children attending it, or by a general rate on the inhabitants of the section. The innovation created much discussion, as will appear from the following to his brother John.

'Feb. 2, 1852.

'I was glad to see that the *Examiner*[1] has come out in favour of free schools. Roaf has written a letter to the *Globe*, whose comments on it are abler than the letter itself. That old anti-church-and-state-man (Peter Brown) thinks free schools a step toward communism and socialism and I know not what other wickedness. If communism or socialism is fairly represented in its essential principles by free schools it is not so bad a thing as we have been led to believe.'

On July 6, 1852, Mr. Mowat was appointed a member of the Senate of the University of Toronto, and in 1853 he was Chairman of the Committee of the Senate, to which was committed the revision of the important University Act of that year. He continued to take an active interest in the proceedings of the Senate until 1872, when he resigned on becoming Attorney-General of Ontario.

In Michaelmas Term, 1853, Mr. Mowat was elected a Bencher of the Law Society of Upper Canada. This honourable position he held until his appointment as Vice-Chancellor in 1864, and again from October, 1872—when he became Attorney-General for Ontario—until his death, a

[1] Then controlled by Mr. James Lesslie.

period of forty years. He was the oldest Bencher of the Society except Mr. John Bell, K.C., of Belleville, who survived him by two years. 1853-4

During this period he was intensely interested in the political struggle then developing between the Tories and the Reformers. His inherited prejudices were naturally with the former, but he could not accept Pope's dictum that 'whatever is, is right.' In a letter written in 1854 to his brother John, then minister of St. Andrew's Church, Niagara, he says, speaking of a journey from Niagara to Toronto :—

> 'VanKoughnet and Joe Morrison were among the passengers on Saturday. I had a long talk with the former about politics. He and George Brown (or rather the *Globe*) positively assert things perfectly opposite. There is evidently no coming to a sound conclusion without reading and reflecting as well as talking. Neither reading nor talking alone will give all the materials necessary for reaching correct results.'

It is most unfortunate that of the letters which he wrote to his father about this time none remain. They were all in the possession of Mrs. John Mowat, senior, and were destroyed by fire in Kingston, shortly before her death. They would have been most interesting, as showing the processes of a mind working clearly and without prejudice in search of truth.

It may surprise many persons who have regarded Mr. Mowat as chiefly, if not wholly, a Chancery lawyer, to know that his practice and his interests

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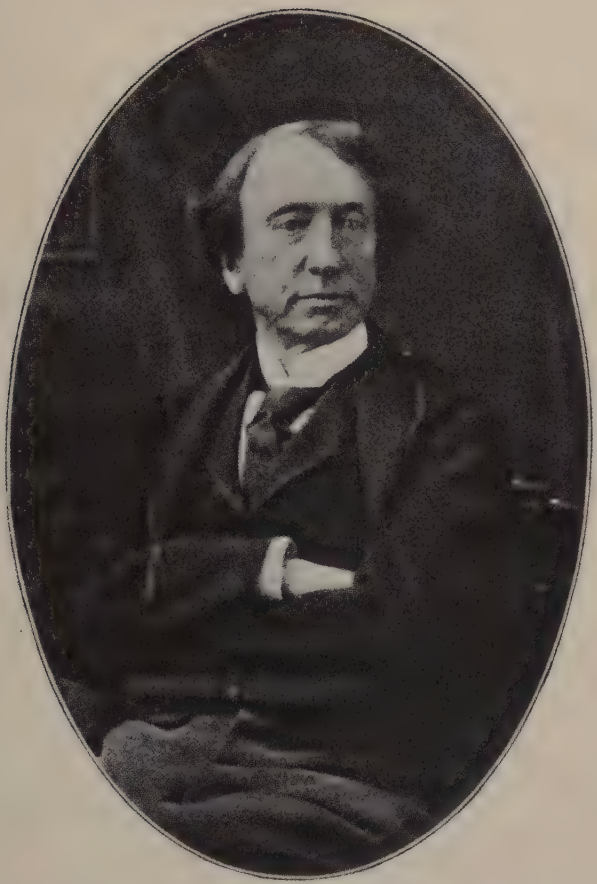
were by no means confined to the west wing of Osgoode Hall. The following letters which he wrote in 1854 to the Hon. John A. Macdonald (whom he calls in a letter of that date 'my friend and late master'), indicate that he had something to do with suggesting and afterwards with drafting The Common Law Procedure Act of 1856, which for nearly twenty-five years was to the practitioner in Upper Canada what 'Holmested and Langton' is to the Ontario solicitor of to-day.

On September 11, 1854, Mr. Macdonald became Attorney-General West in the Macnab-Morin Cabinet, and on September 20 Mr. Mowat wrote him as follows :—

'My dear Macdonald :

'Do you mean to signalize your Administration by any measures of well considered law reform? The term of office is so uncertain that delay may, I fear, destroy the opportunity. I have paid some attention to the Common Law Procedure Act which has just been passed in England, and also to the one which passed a short time before. If you should adopt them wholesale I consider that you would be conferring a great boon on suitors, and introducing most valuable improvements into our system. A judicious selection from the Acts would be still better, but there may not be time for this. I think both Acts unnecessarily verbose and minute, but compression would require more time than selection, to do it well. The very great advantages that have been found to result from giving



RT. HON. SIR JOHN A. MACDONALD

First Premier of Canada

the Chancery Judges unlimited jurisdiction to regulate the practice of that Court incline me to favour giving a like jurisdiction to all the Superior Court Judges. This would be the best safeguard, if they have the inclination and power; and it is much easier to make improvements in the practice by Rules of Court than by Act of Parliament.[1] 1854

'These Acts take an important step towards the fusion of law and equity, by giving Common Law Courts jurisdiction in matters of injunction and specific performance, and allowing equitable defences. This partial fusion would, I dare say, be against the interest of most Chancery practitioners; though complete fusion would, I think, be to the advantage of myself individually.

'If an attempt to deal with the whole of the two Acts referred to is too formidable for the present Session, and if you think it desirable to do something, I should like to have an opportunity of suggesting a few clauses not to be found in the Acts referred to ; though I dare say the professional avocations which press upon me may prevent me from being of much service to you, even if you should desire my assistance; but I would gladly do whatever I can. I think you can hit upon thirty clauses or so that would form a most valuable and useful instalment of a complete work to be carried out next year or afterwards.'

[1] Here follows a passage which is so badly copied as to be illegible.

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And again, on September 27, 1854, he writes:—"I will not bother you with any more letters about law reform after this one, for I know a multitude of things must be demanding your attention just now; but I should like much to see you the author of some large measure of safe and well-considered law reform. I suppose Upper Canada will not be long left with a system behind that of England; and as we have "The Chief Justice's Act" and "Draper's Act" and "Cameron's Act,"—English Statutes carried through our Canadian Legislature by those whose names are now given to them in Canada—it would be a source of gratification to your friends to have your name associated with an Act vastly exceeding in practical value at least two of the three which I have mentioned. "Macdonald's Act"—would it not be of service to you politically if you should carry an important measure of reform which no ill-nature could assert had been forced upon you, if you could show that in your own Department you had, in the very first Session of your attorney-generalship, introduced a more important and valuable reform in the practice of the law than any Canadian legislator had done before? The two English Acts referred to in my former letter have been thought to be entitled to these epithets. I have been looking over the notes I made upon them at different times and some further notes I have made on points they do not touch. I find that a good many of the details of the two Acts are either inapplicable to Canada

or are immaterial. I think that with the labour of two or three days I could draft an Act embodying what remains, with some compression and modification, and a few things from the New York Code which I think you would approve, but which have not yet been accepted in England, and a few suggestions of my own which are the result of my own experience and observation. These you might either strike out or adopt as you choose yourself. The English Acts in a large measure embody principles already adopted in the New York Code. I have no doubt that the draft would stand as a basis, notwithstanding any future changes that may be probable or possible. I have teased you with two letters on this subject, because it is most interesting to me and because memories which come up to me from former years make me regard with heightened satisfaction the idea that *you* should be the author of reforms that are desirable in themselves and that someone is sure to introduce some time or other. The merit of the draftsmanship is nothing, for the material is provided to my hand, and I care not that my part in it should be known at all. The merit must be altogether your own, whose position and influence would accomplish the enactment. 1854

'I find that the two bills might conveniently be broken into four or five : one, as to the law of arbitrations ; another, of evidence, and another, of pleading and practice. This would make the last less cumbrous, and reduce it, in perfect

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form, to less, I think, than a hundred sections. The other three Acts would be short.'

In January, 1856, Mr. Mowat, who had by this time become one of the leaders of the Chancery Bar, 'took silk.' Apropos of this, an amusing story is told by one of his contemporaries. It is said that the future Premier, meeting his former principal, Mr. John A. Macdonald, then Attorney-General, one day on King Street, laughingly suggested the appointment of some new Q.C.'s, but said, 'I suppose you will put me in with a lot of your political friends. I don't want that.' To which 'John A.' replied, 'No, Mowat, I will give you a *Gazette* all to yourself.' Sir John kept his word—which, it is stated on credible authority, that he did not always do—and the *Canada Gazette* of January 5, 1856, contained the official announcement of the appointment of 'Oliver Mowat, Esquire, barrister, to be one of her Majesty's counsel learned in the law.'

Among Sir Oliver's memoranda I find the following :—

'1856—Jan. 5. Appointed a Q.C. The dinner party at my house on this occasion was, I think, the last we gave at the cottage on Church St. Among those present I recollect Dr. (afterwards Sir Daniel) Wilson, John A. Macdonald, Kenneth Mackenzie and Robert John Turner; but there were quite a number of others.'

In February, 1856, Oliver Mowat, Q.C., was appointed by the Taché-Macdonald Government one of the Commissioners to revise and consolidate

the Statutes of Upper Canada, and such of the Statutes of Canada as were applicable to the Upper Province. The other Commissioners were Messrs. John Hillyard Cameron, Q.C., Joseph C. Morrison, Q.C., Adam Wilson, Q.C., Skeffington Connor, Q.C., and David B. Read, Q.C. Mr. Mowat was engaged in this work during 1856 and 1857; but in November of the latter year he resigned it in order to become a candidate for Parliament. By that time, however, the work of the Commission was fairly advanced; and many of my readers will remember how satisfactorily it was done. As I have said elsewhere, the Commissioners, in the exercise of their powers to alter and improve the form and language of the Statutes, approved and acted upon the principles expressed in a report of the Commissioners who had shortly before been appointed in England for the consolidation of the Imperial statute law. 1856

'Brevity and perspicuity are to be attained in Acts of Parliament—as in all other compositions—only by observing the rules of grammar and logic. . . . All that is wanted is that all those who draft these Statutes should be firmly resolved to use a plain and proper style, to choose with care the proper words to express their meaning, and never to use a word that is not wanted. Above all, it should be assumed that they are writing for persons of ordinary candour and intelligence; and it should not be thought necessary to provide against every foolish and unworthy

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quibble which unfair or unreasonable critics may suggest.'

I have quoted this passage because it describes, in better words than I could otherwise use, the chief characteristics of Mr. Mowat's own style, in both writing and speaking.

In December, 1856, in accordance with a rule of the Law Society of Upper Canada then in force, Mr. Mowat delivered a lecture to the student members of the Society at Osgoode Hall. He chose as his subject 'The use and value of American Reports in reference to Canadian jurisprudence,' and the following extracts will give an idea of the views which he sought to inculcate :—

'In cases for which English authority cannot be found, assistance in ascertaining and determining our own law may sometimes be derived from American Reports; and as a number of these Reports have lately been added to our library, and as a complete set will, I hope, soon find a place there, I think I may with advantage suggest to you a few leading cautions in regard to the use of these Reports. For while, on the one hand, a judicious use of them is recommended, as I shall show, by the authority and example of the best English Judges and jurists; so, on the other hand, an indiscriminate resort to American decisions is extremely undesirable, and will occasion much profitless labour, both to those who indulge in it, and to the Judges before whom such reports may be cited.

'First, then—never cite an American Report on a point of practice. Counsel was lately reproved by one of the Courts in England for citing an Irish case on a point of practice; and it would manifestly be much more absurd to cite an American case on such a point. 1856

'Then, secondly—never cite an American case until you have ascertained that the English and Canadian authorities leave in doubt the point you are investigating. It is, generally speaking, in law as well as commerce, quite as absurd to import from a distance what we can better obtain at home, as to refuse supplies from a foreign source which are not otherwise to be had. Besides, on points on which we have authority in our own Courts, American decisions are not always in accordance with such authority, and may therefore mislead instead of assisting you. On a point of importance and difficulty, and on which but a single English decision can be found, an adverse American decision may indeed occasionally have weight in inducing a reconsideration of the question. Thus Lord Denman, when he learned that a decision of his own (*De Vaux* v. *Salvador*, 4 A. & E. 420) was opposed to the decision in an American case, (*Peters* v. *The Warren Insurance Co.*, 3 Sumner, 389) said that "the opinion pronounced in the latter case would at least neutralize the effect of the English decision, and induce any of their Courts (in England) to consider the question an open one." But in the Canadian Reports I do not at present

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recollect any indication of so much deference to an American Court.

'Thirdly—never cite an American case unless you have first read the report of it, if accessible, and have ascertained for yourself that the case is really in point and does not proceed on some peculiar Statute of the State.

'I should add to these three rules a fourth, arising from the numerous points on which, in American, as in English books, there is a conflict of authorities. Wherever there are several Courts of independent jurisdiction there will be conflicting decisions; and from there being a larger number of such Courts in the United States than in England, the reports of the former contain a larger number of cases than those of the latter, in which different Courts have come to opposite conclusions. This will render it peculiarly necessary for you, when you resort to American cases and find one in point, to see whether the case you have found is really the only one in point, and whether there may not be others which conflict with it. You cannot safely avoid a like course when your examination is confined to English authorities; but, in that case, neither the temptation to avoid the trouble of the search, nor the danger of being yourself misled, or of imposing unnecessary labour on the Court by your neglect, is nearly so great. If your investigation of the American authorities is to guide your own opinion, you may as well not refer to them at all, as to neglect weighing, as far as you can, all they

contain upon the question you are considering. 1856
If your investigation is in preparation for an argument before the Courts, you should either forgo all reference to either class of the cases which conflict or cite those against you as well as those in your favour. The diversity of decisions which is thus to be found in those Reports is much less embarrassing to us than it must be to the American Courts. In some respects, indeed, it is an advantage to us. It puts us in possession of what have appeared to able and learned Judges to be the strongest reasons in favour of every view of a doubtful question, instead of our having no more than the particular view formed by the first Court which may happen to have been called upon to decide the point. Our Judges, to whom as authority an American Report is nothing, have thus, in such cases, great advantages in coming to a sound conclusion.'

In 1856, Mr. Mowat—who was then earning as a leader of the Chancery Bar a larger income than he ever afterwards received, even as Lieutenant-Governor of Ontario—built for himself on the west side of Jarvis Street, north of Carlton Street, a residence which in those days was considered almost palatial. The house was surrounded by large grounds, on part of which the buildings of Havergal College now stand. In 1861, after the reduction of his income caused by his renunciation of a large part of his practice in order to devote himself more thoroughly to public life,

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he sold this house to the late E. C. Rutherford, whose widow still occupies it. At the time of his marriage Mr. Mowat had leased a house on the east side of Bay Street, below King Street, one of a row of three-story brick dwellings, since demolished to make room for warehouses. He lived there until January, 1848, when he moved to the 'yellow cottage,' which stands in a large garden on the north-east corner of Church and Crookshank Streets. It is now no longer a cottage, a second story having been added by the late Mr. Edward C. Jones, a well-known barrister of Toronto, who purchased it from Mr. Mowat.

There are still a few—but alas ! very few—who remember the gracious and generous hospitality that was dispensed by Mr. and Mrs. Mowat in these houses. Both of them thoroughly enjoyed giving dinner parties, and most of the leading men of Canada from 1846 to 1861 were among those whom they entertained. With a family connexion so large and so united, the guest-chamber seldom stood empty. Mr. Thomas Ewart's children spent the year of their father's absence in Madeira under Mrs. Mowat's care; and among other visitors of those early days were the daughters of Col. McLean of Cornwall, the Rev. Dr. and Mrs. Machar and their daughter Agnes ('Fidelis') and the Misses Hopkirk of Kingston. Especially after his entry into political life, Mr. Mowat kept practically open house during the meetings of the Presbyterian Synod and the time of the Provincial Fair.

Until he left the Jarvis Street house and gave up his horses he was in the habit of riding daily before breakfast, whenever the weather was at all suitable; and after his marriage he was generally accompanied by his wife. Breakfast was not early. Court did not sit until eleven; and even the busiest lawyer was seldom in his office before ten o'clock. In the early years of their married life they dined at five, a very late hour for those days, and from dinner time until ten or half-past ten o'clock Mr. Mowat seldom did any work. Besides the frequent dinner parties it was the custom of those days for friends to drop in about eight o'clock for tea, cards, music and conversation —in this case, chiefly the last. These evening gatherings took the place of our five o'clock teas, and they had this advantage over our fashion, that the men shared the social intercourse to a much greater extent than now. 1856-61

Besides Mrs. Mowat's brothers and her sister, Mrs. James Strange, some of the intimates of those early days were Mr. and Mrs. Stephen Richards, Mr. Philip VanKoughnet, Mr. D. B. Read, Mr. and Mrs. Matthew Drummond and Mr. and Mrs. Allan McLean, old Kingston acquaintances. Less frequent guests were the Hon. John A. Macdonald, Chancellor and Mrs. Blake, Chief Justice and Mrs. Draper, Judge and Mrs. W. B. Richards, and Professor Young. Later, in Jarvis Street, among their most intimate friends were Professor and Mrs. Daniel Wilson, Professor and Mrs. Croft, Professor and Mrs.

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Chapman; and their dinner parties included a large number of politicians from both sides of the House.

When no guests were present Mr. Mowat spent the earlier hours of the evening in the relaxation of general reading; and the large library which he collected, chiefly at this period, bears testimony to the amount of reading he did and to the catholicity of his taste in literature—history, biography, political economy, theology, science, poetry, besides all that was best in current literature, including for many years the four *Quarterlies* and *Blackwood's Magazine*. In all this, his wife shared his tastes and interests. For one whole winter they studied French together, Mr. Mowat thinking it important, from a political point of view, that he should be familiar with that language.

At ten o'clock, or shortly after it, he went to work at his briefs until the 'wee sma' hours ayont the twal'.' Mrs. Mowat generally sat beside him, never interrupting his work, but always ready, when called upon, with interest and sympathy, though the subject of consideration might be a point of equity or a political problem.

CHAPTER IV

ALDERMAN—M.P.P.

IN December, 1856, Mr. Mowat took a step which surprised many of his legal *confreres* in offering himself as a candidate for the office of alderman of the City of Toronto. He was elected for the ward of St. Lawrence, with the late Mr. Alexander Manning as his colleague. 1856-7

Mr. Read says[1] :—

'That a quiet equity lawyer should step out of his office to run for alderman was past understanding. The fact was, no doubt, that Mr. Mowat felt that he was suited for public life, and that this was the shortest road to gain public attention to his ability as a debater. He proved to be an excellent alderman, and introduced many reforms in the City Council which remain to this day as evidence of his ability as a municipal officer. He was chairman of the Walks and Gardens Committee, and brought to the notice of the Council, in an able report, the necessity of laying out parks throughout the city. There had been properties dedicated for parks by the Government, which had been totally neglected and never brought into use. This was all altered after Mr. Mowat's report, several parks being established, and the Queen's Park obtained from the University.'

[1] *Lieutenant-Governors of Ontario*, p. 243.

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Writing to his brother John (Dec. 26, 1856) Mr. Mowat says :—

'As to my election, I have no chance of getting in with anything like unanimity. I call a meeting once a week, but as these meetings are usually attended by few except the supporters of the candidate, unanimity at them does not indicate much. I have learned a good deal about elections already, through this contest, and may hereafter give you some facts which, as a minister, you ought to know. At my last meeting I was denouncing corporation jobbery, and pointing out how the ratepayers suffer in consequence. One of my illustrations—though I made no specific allusion—exactly fitted one of my supporters, who happened to be standing right in front of me, and whose case was well known to the people present. Of course I had not the slightest idea of this application of my remarks. I was told that afterwards he cursed and swore, but said that, having promised to vote for me, he would not go back on his word and would vote for me after all.'

In the following December (1857) Mr. Mowat was elected, with Mr. A. M. Smith, as alderman for the more aristocratic ward of St. James, Mr. John Beverley Robinson being at the same time elected an alderman for the ward of St. Patrick. It was in the following year that he drafted and carried through the City Council by-law No. 254 of the City of Toronto, intituled 'An Act to provide for the better administration of the affairs of the Corporation,' which was long

known as the 'Mowat By-law,' and forms the basis of the one now in force governing the proceedings of the Council and its committees. 1856-7

Mr. Read's notion that Mr. Mowat felt himself suited for public life and took this as the shortest road to it, receives confirmation from a letter written by the Hon. John Beverley Robinson on Aug. 9, 1880, evidently in answer to a letter of congratulation on Mr. Robinson's recent appointment as Lieutenant-Governor of Ontario.

'My dear Mowat :—

'I received your letter from Venice on my return from Mr. Allan's residence on Lake Simcoe. Many thanks for your congratulations and good wishes. Your allusion to our former companionship in the office of Strachan & Burns and in the City Council, is a pleasant reminder of old times. Do you remember when we two, being aldermen, were sent as a deputation from the City Council to the Legislative Assembly, or to some committee thereof then sitting ? I asked you, when driving back, whether you would like to be there. The earnest way in which you replied, "Yes; and some day I mean to," has never been forgotten by me, and I have several times repeated it to my friends. You have now been gratified by a long and distinguished service there, both as M.P.P. and as Premier, and I doubt whether you could have followed any other career in this country which would have given you greater satisfaction.'

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Meantime Mr. Mowat had taken a further step, destined to be fraught with important consequences, not only to himself but to this Province, to the Dominion, and, I think I may say, even to our relations with the Empire. At the general election of 1857 he offered himself as a candidate for the Legislative Assembly in the Riding of South Ontario, his opponent being the Hon. Joseph Curran Morrison, Receiver-General (Finance Minister) in the Macdonald-Cartier Administration.

Two important questions then divided the people of this Province, viz.: representation by population, and sectarian schools. As to each of these a word of explanation may be necessary.

The Act of 1840, uniting the two Provinces of Upper and Lower Canada, provided that each should have an equal representation in the Legislative Assembly, but that this might be altered at any time with the concurrence of two-thirds of the members of each House. Although the population of Lower Canada then exceeded that of the Upper Province by about 175,000, that condition was now reversed. The population of Canada West had increased so rapidly that the census of 1861 showed it to contain 290,000 more persons than Canada East, the official figures being, for Canada West, 1,395,333 and for Canada East, 1,106,148. The Reformers of Canada West accordingly demanded a re-adjustment of representation on the basis of population, contending that a Union which kept up a line

of demarcation between the two original Provinces was not a real Union, nor could be until every elector in Canada had an equal share in the choice of representatives to the common Assembly. But this was opposed by the Macdonald-Cartier Government on the ground that it would be a breach of the original compact, and might lead to a dissolution of the Union. 1857

As to sectarian schools, also, the two parties were sharply divided, the Reformers contending for non-sectarian public schools, while their opponents stood by the existing system, which, ever since 1843, had authorized the establishment of Roman Catholic separate schools and permitted them to share *per capita* in the moneys voted by Parliament for common school education.

It is evident now, in retrospect, that a revision of the basis of Union was rapidly becoming inevitable.[1] Not only was the western division of the Province more populous than the eastern; it was also much more wealthy; and—to say nothing of other taxes, such as license fees, law stamps, etc.—its contribution to the provincial treasury in the form of customs dues alone was more than three times that of Canada East. In 1855, for example, the customs duties collected from Canada West amounted to £630,394, while those from Canada East amounted to only £183,425. Nevertheless, the larger share of parliamentary grants went every year to the Lower Province, the cause—as well as the consequence—being,

[1]See De Celles. *Sir Geo. E. Cartier*

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that the very existence of the Macdonald-Cartier Government depended upon its Lower Canadian majority, and that much of its legislation—even that which exclusively affected the western part of the Province—was carried against the will of a majority of the members from Canada West by Lower Canadian votes. This was the real *crux* of the situation; and the sense of injustice which it naturally provoked in Upper Canada was intensified, on the one side, by the uncompromising and even contemptuous attitude of the Lower Canadian leaders, and, on the other, by the trenchant and often bitter editorials of Mr. George Brown.

The Hon. Mr. Cartier, when confronted with the census returns, declared from his place in the House that 'the 250,000 Grits of Western Canada' had no more right to representation than as many codfish in Gaspé Bay; and the Hon. Mr. Loranger was cheered to the echo when he said to his compatriots, '*Nous avons l'avantage—profitons-en.*'

Mr. Brown, on the other hand, seeing no hope of compromise, set himself to carry the fiery cross to every corner of Western Canada, and render impossible the election in this Province of any man who would not maintain the right of its people to representation according to population.

The election of December, 1857, in South Ontario was long famous in our political annals. Both candidates were Scottish-Canadians, both were distinguished lawyers, and both men of

unusual ability and of agreeable and winning manners. Mr. Morrison had sat in the House during three previous Parliaments, and had at his back all the influence of the Macdonald-Cartier Government, of which he was a member. Mr. Mowat was as yet an untried and, politically speaking, almost an unknown man. He had, however, inherited the fighting qualities of his sire, and the fact that he had no political sins to answer for gave him some advantage over his opponent, who was handicapped by burdens not only personal but governmental. Mr. Morrison had been elected in 1847 for the West Riding of York as a Liberal, and had been a trusted supporter of the Baldwin-Lafontaine Government. From 1851 to 1856 he represented the town of Niagara, and in 1853-4 he was Solicitor-General in the Liberal Cabinet of the Hon. Francis Hincks. In April, 1857, however, he accepted office in the Taché-Macdonald Government, and, though he was again returned for Niagara, many Reformers throughout the Province felt that he had deserted his party for the sake of office. 1857

Besides this personal burden, Mr. Morrison came before the electors of South Ontario with all the sins of the Macdonald-Cartier Administration upon his head.

He had voted against Mr. Brown's resolution 'that the representation of the people in Parliament should be based upon population, without regard to a separating line between Upper and Lower Canada'; he had voted for an extension

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of the Roman Catholic Separate School system; he had voted for the grant of 4,000,000 acres of Crown lands to the North Shore Railway—a measure which Mr. Joseph Cauchon, with his following of 18 members, forced upon the Ministry; and (after Mr. Cauchon's retirement from the Cabinet) he had voted for a further grant of 1,500,000 acres to the St. Maurice Railway & Navigation Co., which shortly afterwards amalgamated with the North Shore Railway Co.; he had voted for an appropriation of $200,000 towards the erection of Parliament Buildings at Quebec: and, finally, he had been a party to that piece of political legerdemain by which the Macdonald-Cartier Administration, shirking their executive responsibility and ignoring the vote of the Assembly in 1856, had imposed upon Her Majesty the Queen the invidious task of selecting a permanent capital for Canada.

He came, too, as a discredited politician,—rejected by his own constituency of Niagara, and rejected again by Peel, where he had tempted fortune only to be beaten by Mr. J. C. Aikins. South Ontario, as we shall presently see, had no mind to become an ark of refuge for wandering politicians in search of parliamentary seats.

It had at first been intended that the Reform candidate for the Riding should be a local man, and the names of Mr. Abram Farewell of Whitby and Mr. Peter Taylor of Pickering had been

mentioned. Indeed, Mr. Farewell was actually chosen by the Reform Convention which met at Greenwood on Dec. 11, 1857; but when it became known that the Conservative candidate was to be the Finance Minister of the Macdonald-Cartier Government, the party managers thought it desirable to meet this great gun with metal of at least equal calibre. 1857

Accordingly, some of the leading Reformers of the constituency prepared and presented to Mr. Mowat a requisition, which, with his reply, I here reproduce :—

'To Oliver Mowat, Esq., Q.C.,—

'Sir,—We, the undersigned electors of South Ontario, request you to become a candidate for the representation of this riding in the Provincial Parliament, at the approaching election, and we pledge ourselves to give you our votes and hearty support:—

'William Dunbar.	William Hartrick.
John Ratcliff.	Peter Head.
George White.	William Lumsden.
John Warren.	Andrew Haxton.
David Clarke.	John M. Bothwell.
George Flint.	John D. Botsford.
William Wilkie.	Brereton Bunting.
Hugh Carmichael.	W. W. Leavens.
George Tait.	J. N. Agnew.

And many others.'

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Mr. Mowat's reply was as follows:—

'To the Free and Independent Electors of South Ontario:—

'Gentlemen,—In compliance with the above requisition, and in reliance on the promises of support which have been communicated to me from various parts of the riding, I beg to offer myself as a candidate for your suffrages at the approaching election.

'If you should elect me, I will apply myself heartily to the great work of securing to the people of Canada an honest, economical, and efficient administration of public affairs.

'A native Canadian, I have as strong an attachment to Canada as any man can have to the land of his birth; and I feel an intense interest in all that concerns its welfare and its honour. I am proud of the progress which the country has made hitherto; I contemplate with satisfaction the future which awaits it; and my ambition is to assist in doing what legislation can do for the prosperity, enlightenment, and happiness of its inhabitants.

'I am in favour of parliamentary representation being based upon population, irrespective of a dividing line between Upper and Lower Canada; and I will advocate the immediate passing of measures for carrying out that principle. I think no thoughtful man who is really in favour of the principle can contend for delay in the application of it. If Upper Canada has a larger

population, delay is as unjust as it is injurious to us. If our population is not the greater, there can be no harm in an immediate legislative recognition of our rights, by at once passing the measures which are necessary for giving effect to them. 1857

'I have a deep sense of the important bearing which the general diffusion of sound education has on the liberties and character, and, in fact, on every interest of a people; and I shall earnestly support whatever will aid so great an object.

'I rejoice to learn that the inhabitants of this riding are strongly in favour of non-sectarian schools. I am of opinion that no religious denomination in Canada should have power to tax its people for the support of separate schools, and that the general good requires that every fair inducement should be held out to the adherents of all religious denominations to have their children educated together. I believe that mutual respect and good will would be thereby promoted among all classes of the community; at the same time that a better education would be afforded than can generally be expected in separate schools.

'I believe there is much room for reform in almost every department of public affairs; and measures of that description will always receive from me a warm support.

'I have given much attention to the subject of law reform; and I hope to be of assistance in

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removing useless and pernicious technicalities which are still recognized, in simplifying procedure, and in improving the language of our Statutes.

'In regard to measures of local concern, it will be my duty and pleasure to give to them my best attention, and to further to the utmost of my ability every just object of local interest which the majority of you may desire.

'I shall avail myself of such opportunities as the time left to me will afford, of stating to you at greater length my views on the various subjects of public interest. But I may say generally, that, if elected, my desire is to perform my duty in Parliament in the spirit and with the views which become a Christian politician.'

'I have the honour to be

Your obedient servant,

'O. Mowat.'

'Toronto, December 15, 1857.'

The phrase 'Christian politician,' used in the last paragraph of this address, soon became historical, and was often afterwards applied to Mr. Mowat, not always in the kindliest spirit. Yet, looking back over his forty years of political life, I think there are few who would now contend that the desire expressed in his concluding sentence was not sincerely felt and faithfully fulfilled.

The contest between Mr. Morrison and Mr. Mowat was carried on by the candidates themselves with the utmost courtesy; but as much can-

not be said of their supporters. As a follower of the Hon. George Brown, Mr. Mowat was held responsible for all the public utterances of that gentleman, and the editorial files of the *Globe* were ransacked to prove him a bigoted and intolerant Protestant. Again, he was a Chancery lawyer, and at that time the Court of Chancery was far less popular than it has since become. Lastly, he was accused of being an office seeker and greedy of gain. The *Whitby Chronicle* of December 29, 1857, the day before the polling, asked in conspicuous type 'Who received $10 per day from the present Government? OLIVER MOWAT! Yes; Oliver Mowat received $10.00 a day from the Macdonald Administration!' 1857

The reference is to Mr. Mowat's employment as one of the Commissioners for the consolidation of the Statutes ; and professional men of to-day can scarcely fail to smile at the idea of a leading counsel at the Chancery Bar accepting ten dollars a day for work of such a character.

The polling took place on the 30th and 31st of December, 1857, and the official declaration of the result was made by the returning officer (Mr. John Ham Perry) on January 2, 1858. Mr. Mowat had received 1508 votes, Mr. Morrison 703. The majority for Mr. Mowat was therefore 778, or 75 more than Mr. Morrison's total vote.

The Reform successes in the election of December, 1857, and especially the defeat of the three Ministers—Mr. Morrison in South Ontario, Mr. Cayley in Huron and Mr. Spence in Wentworth—

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were celebrated by a series of banquets, at some of which the new member for South Ontario was an honoured guest. His speeches at these functions review the political situation and touch chiefly upon the two great questions of the day, viz.: representation by population and sectarian schools. They scarcely require quotation, except perhaps in one instance, which illustrates the courtesy with which he uniformly treated his political opponents,—a courtesy which, it is but fair to say, that, as a rule, they fully reciprocated. At the Wentworth banquet in honour of Mr. Wm. Notman, who had defeated the Postmaster-General (Hon. Robert Spence), Mr. Mowat said:—

'I would join my congratulations with those of the speakers who have preceded me in regard to the great victory which you have won. I look upon it as the more significant because Mr. Spence is a man of talent and eloquence, and one of the best departmental officers in the Ministry. Your condemnation of him, then, shows distinctly to the country that you have objected to him not upon private grounds but on account of political misdeeds.'

In January, 1858, Mr. Mowat's old friend and fellow-student, Mr. Alexander Campbell, determined to be a candidate for the Legislative Council. He had never been extreme in his views, and Mr. Mowat and he had much correspondence as to the political situation and the contents of Mr. Campbell's election address. Mr. Mowat naturally desired Mr. Campbell to take a

firm stand on the two great questions of representation by population and sectarian schools; but Mr. Campbell, equally loyal and equally conscientious in his search after truth, could not quite adopt the views of his friend. Some of Mr. Mowat's letters on the subject are interesting: 1858

'Jan. 16, 1858.

'I send you the newspaper report of what I said at the Dundas dinner, and a copy of my address to the electors of South Ontario. Neither of them contains anything against the Ministry except by implication; but, in making up my mind that I should go into complete opposition, one of the most powerful considerations which influenced me was the conviction that the Ministry would do anything to keep in office; that nothing was too bad in legislation or government for them to adopt if it helped to secure their places. I am sure they would not do corrupt things from a sheer love of corruption, or refuse to pass good laws from a wanton preference of bad ones. But who would? They constitute no protection against any obnoxious class of measures, for they have shown themselves prepared to take up any measures whatever, however strongly they have previously opposed them and however strongly, perhaps, they are really opposed to them still, if they think opposition would render their seats insecure. I never met a candid and intelligent friend of the Ministry who would not acknowledge this. Our friend Macdonald does

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not pretend to patriotism. In private, he laughs at it, as you must have heard him do yourself. There is nothing that sustains his Government but his own popularity and tact, and the cry about Geo. Brown. It did seem to me that opposition to such a government had become the duty of every one. It corrupts public men and the public itself. Party government seems essential to our institutions; but I see no use in party if the people may maintain in power a set of men, who, when their own principles become unpopular, are ready to take up their opponents' policy, and when this becomes unpopular go back to their first views, and so on to the end of the chapter. I think we should struggle to purify public sentiment and political sentiment. To men like Chief Justice Robinson or Robert Baldwin corrupt supporters would not have dared to make corrupt proposals. Has virtue died with such men ? There was Mr. Bidwell too. He was opposed here, but all give him credit for uprightness of intention. As Canadians, can we rest satisfied with the political guardianship of those to whom it would be a farce to ascribe political virtue, or any higher motive than the love of office with its prestige and its power ? I see nothing to quarrel with in the leading measures of the Opposition; and their future measures and policy *will depend on those who may constitute the party when those measures and that policy will have to be determined upon.* In a conversation with McD. two or three months

ago, about my joining the anti-ministerialists, he in effect suggested that my reason was because I would have a better opportunity for distinguishing myself in opposition than as a mere supporter of the Ministry. If I acted from so low a motive, no doubt that consideration might have had weight with me. But I need hardly say I had not even thought of it before the *Leader*, to throw ridicule upon me when I first made my appearance in South Ontario, called me "the Clear Grit Attorney-General," or "Geo. Brown's Attorney-General," and pronounced me "an avowed office-seeker." These things amused me, for, as you know, there was not a particle of truth in the charge of my wanting either an Attorney-Generalship or office. A few years hence I should like such a position. If I take it earlier, it would be with undisguised reluctance. The charge of "Gritism" or "Brownism" I thought nothing of, just as I had made up my mind to disregard any and every other party name as only embarrassing. I state my principles. Let every man give them the name which may suit his fancy. I have taken great pains to be right in my start upon political life. I hope I have not "made a mistake." I dare say I shall find I have lost Macdonald's friendship, and perhaps for a while somewhat clouded VanKoughnet's also. I shall be very sorry for this; but one must not shape one's political course by friendship. 1858

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'I owe you an apology for so long a "screed." But I shall be delighted with the frank statement of your own views at any length. If they differ from my own I shall regret it ; if they agree with mine I shall rejoice: but either way I hope our politics will never abate those kind feelings which have so long existed between us. I think I can promise this for myself, and I cherish a pretty strong faith in it in regard to you.

'P.S.—My first idea—when I reflected on the fact that old party lines were destroyed ; that there were on each side persons who called themselves, and were called by others, Conservatives, and on each side those also who were called Reformers—was that it would be sufficient to take an independent position, to join neither side, to contend for my own views where they differed from those of the Ministry and to condemn their misdeeds as occasion offered, but not to link myself with the Opposition any more than with the Ministry. But I ultimately became satisfied that such a position was impracticable and would lessen my influence for good. Neither party would care for me. I should be subject to misrepresentation by each. I doubt not the Government would have accepted my support in that form rather than have my opposition. But every man must take a side. Then he helps to mould the future policy of that side. His motions have the support of his party. He is more powerful for good, if good is his object. He

gives his adhesion to the only principle on which free government appears to be capable of being worked, viz.: a distinction of parties. He is more useful as a friend—more powerful as an antagonist. I do not contemplate a factious opposition. That should be offered to no Government. But my sheet is filled.' 1858

'Jan. 24, 1858.

'A word more about politics. Do not be carried away by names, I beg of you, my dear fellow. What is the difference now between "Liberal Conservatives"—the name I presume you like—and "Constitutional Reformers"? Do not keep aloof, from historical recollections or associations, from those with whom you are really at one, or between whom and yourself there are really more bonds of union than there can be with the Conservative leaders, who really have no principle nor patriotism. The name is, indeed, retained but it possesses nothing now that can excite any good man's affection. If you read English history with this view you will find that the Tories have sometimes been the democrats against the Whigs, and the Whigs sometimes the democrats against the Tories. I have been much struck with that fact. So again, the one party has sometimes had most virtue on its side, and the other party has had it at other times. The choice of a party must be made *as parties stand when the choice is made*, and not as they stood at some former period; and, once it has been made, an upright man

Chap. IV must do his best to keep his party right, as well as to obtain for it success.'

'Jan. 26, 1858.

'I enclose a newspaper report of another speech of mine. I have accepted an invitation to a dinner to the members for the county of York on the 3rd of February. I have some idea of taking the opportunity to state, more fully than I did in my letter to you, why, independently of the two questions of representation by population and sectarian schools, the Ministry should not receive support. These dinners, however, do not suit my taste at all, though they serve to bring me into contact with the people. I cannot speak with much force unless I have an opponent, and things are said by others which I do not altogether coincide with. . . . You should take the *Globe* whether you agree with it or not. Did you see the "Retrospect" published as a supplement before the elections? If you are making up your mind, you cannot safely dispense with it, though I do not endorse all it contains.'

'Feb. 1, 1858.

'Thanks for your long and friendly letter. I have no bitterness towards Macdonald or Van Koughnet, but the contrary. What I say of them is what I infer from their acts, and was said most reluctantly. I like both V. and McD. as much as ever I did when I saw more of them. If I speak unfavourably of them, I do so as I would of men of a past age, whose course I de-

liberately thought objectionable. This good feeling they may destroy. Perhaps it is impossible for them to think without bitterness of one who is in opposition to them—deliberately but strongly—and whose duty it has been and will be, with the views I have been led to entertain, to endeavour to prove that their course disentitles them to public confidence. When you say they are "no worse than their successors would probably be," do you mean that their policy of adopting the measures of their opponents to get office, or keep it, is not a policy that would be looked on with abhorrence in England? Do you think English statesmen of character would do it? Ought we not to place the stamp of our reprobation upon it, whatever we think in other respects of some of those who have adopted and have taken office or kept office on the strength of it? Does not such a policy encourage their supporters to demand corrupt measures and jobs from them? Does it not take away all moral strength in resisting such demands? I think McD., for years after he went into Parliament, would not have been willing to take office, or keep office, on the terms on which he does now. I am pretty sure that V., until he joined the Ministry (or shortly before), would have asked "Am I a dog, that I should do this thing?" I think the policy I refer to is not the recognized policy of parties in any country. Have you ever read Lieber's *Political Ethics*? Get the book, if you have not got it already. 1858

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Every politician should study it, or some book of the kind, though I know none other so full. And, by-the-by, I do not speak of McD. and V. as if they were the worst. They are perhaps the best. V. at all events must have wholly changed unless he is among the best. But of course McD. inaugurated the policy I condemn; and both of them are responsible for all that has since been done. I quite agree that the clergy reserves were rightly secularized, and I believe the Churches of England and Scotland would on the whole have been better off if the commutation had not taken place. But those who had all their lives said "nay" should not have said "yea" in order to get office.

'Mind, I do not say a government can be carried on without compromises and without being influenced by expediency. I know it cannot. I know, too, that some of its members are likely in any case to be men of no real love for political and public virtue. But as much suspicion is entertained of lawyers, as much doubt of the possibilities of their being honest, as of politicians; yet neither of us, I hope, has found it impracticable to be honest as lawyers. Then, why can we not have again men of the moral character of Baldwin, or Bidwell, or Lafontaine, or Robinson—not to speak of others ? The United States produced a Washington and many other men of inferior note but equal uprightness in their public capacity. We really have no such grounds for suspecting or inculpating the leading British

statesmen of the present day as we have our own politicians of the ministerial side. I do not go for what we have no experience of, or what history gives no example of. I confine my hopes altogether to a degree of political virtue which experience and history shew to be quite practicable. Then again, McD.'s successful adoption of the policy of taking up the measures of his opponents and abandoning his own views—on all questions, great as well as small—is apt to teach a lesson which other politicians and parties will be too willing to follow. A precedent takes away half the objection—or all the objection—to a wrong course. I do not object to taking up opponents' measures, in the abstract; but I object to taking them for the sake of office, and taking them without conviction or pretending conviction that they are right. Surely the adoption, for the mere sake of office, of bad measures (or those the politician deems bad, which amounts to the same thing) which were long opposed openly and decidedly, strikes you as indefensible. The doing so, too, I fear, has been followed by the kind of proceedings one would expect from such a beginning. One could not reasonably expect that after swallowing all the measures of the Hincks Administration, succeeding measures would only be adopted when they were approved of as good and for the country's interest. It was the first step in the wrong direction that would in this case be the difficulty. When bad measures to which they had been vio- 1858

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lently opposed were accepted, bad measures which they had not had occasion to oppose would form no difficulty.

'I read the account of the proceedings of the Convention. I was delighted to see the good feeling which is displayed towards you on every hand, and I am gratified by the exceedingly friendly tone of your letter to me. But my paper is exhausted.'

On Feb. 25, 1858, Mr. Mowat took his seat as a member of the Provincial Parliament. 'The Opposition justly regarded him as an important acquisition to their ranks, wherein he took a place second only to that occupied by Mr. Brown himself,'[1] and before the close of his first Session he was destined to obtain—and to lose—the rank of a Cabinet Minister.

I shall not repeat the oft-told[2] story of the Session of 1858. 'It was,' says the Hon. James Young, 'not only the longest Session during the old Parliament of Canada, but it surpassed all its predecessors in boisterousness and bitterness; and it stands almost without a parallel for the political struggles, crises and scenes which characterized it.'

Mr. Mowat moved one of the amendments to the Address and took a prominent part in the debates. Although his voice was not strong or

[1] Dent: *The Last Forty Years*, ii. 364.

[2] Pope, *Sir John A. Macdonald*, i, 183-204 : Macpherson, *do*, i, 333-387 : Collins, *do*, pp. 207-223 : Mackenzie, *Hon. George Brown*, pp. 59-68 : Dent, *The Last Forty Years*, ii, 367-389 : Young, *Public Men and Public Life in Canada*, pp. 111-122.

sonorous, he soon gained the ear of the House. 1858
His style was never oratorical, but always clear and argumentative. One who heard him often says, 'His speeches always commanded attention. His choice of words was accurate and felicitous. He was, as a rule, urbane and courteous to those who sat on the other side of the House, and he never misstated or underrated the arguments of an opponent.' He usually spoke somewhat slowly, but in a high key, and there was a jerkiness about his utterance which somewhat marred the effect of his speeches. The Hon. John A. Macdonald once sent him this note across the floor of the House :—

'July 19, 1858.

'My dear Mowat :

'You made a very good speech, but it would have been more impressive if delivered with more ease. I don't mean ease of enunciation—for you have lots of that—but ease of tone. You speak in too high a key, and strain your voice so that it falls not too pleasantly on the ear. So, as I want you to be the first legal speaker of the Opposition, take my hint as it is meant; don't imitate ——.

'Yours always,
'John A. Macdonald.'

Yet, urbane and courteous though he was, I should altogether fail as a biographer if I represented him as merely a combination of milk and honey.

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He was not only George Brown's first lieutenant, but was himself 'a first-class fighting man.' In one of the debates in 1860 he so taunted the Hon. John A. Macdonald as to make that gentleman cross the floor and threaten to 'slap his chops;' a threat which he did not venture to execute.

Again, in 1862, a question of veracity arose between him and the Hon. A. T. Galt, then Inspector-General. Mr. Mowat characterized a statement of Mr. Galt's as 'utterly false' and was promptly called to order by the Speaker (Mr. Lewis Wallbridge), urged thereto by a wild chorus of disapproval from the Ministerial benches. For a minute he paused and the House sat silent. Then, to the astonishment of all, the usually unimpassioned speaker burst forth in a stream of proof and invective which paralyzed all opposition and so captured the situation that no member on the Government side of the House ventured to make any reply.

A spectator of the scene writes :—'In an instant there was a furious uproar, both sides shouting and the Speaker calling "Order. Order." Mr. Mowat stood silent for a minute, and then his voice rang clear and steady through the Chamber, carrying sentences so full of force and fire that everybody was stunned into silence. When he sat down no one rose to answer him, and both his opponent and Mr. Speaker looked as if they had made some serious mistake.'

The Macdonald-Cartier Administration had begun the Session with a majority of 37 on the

Speakership, but on July 28, 1858, they were defeated by 14 votes on a motion by Mr. Piché 'that the city of Ottawa[1] ought not to be the permanent seat of Government for the Provinces.' They chose to regard this as a vote of non-confidence and immediately resigned. The Governor-General (Sir Edmund Head) requested Mr. George Brown to form a new Administration, which he did; and the members of the Brown-Dorion Cabinet—in which Mr. Mowat was Provincial Secretary—were sworn in on August 2. On the afternoon of that day, the seats of the new Ministers having been vacated by their acceptance of office, votes of non-confidence in the Brown-Dorion Ministry were carried in both Houses; in the Legislative Council by 16 to 8, and in the Assembly by 71 to 31. Next day (Aug. 3) Mr. Brown waited upon the Governor-General and advised him to dissolve the House with a view to a new election, but His Excellency having refused that advice (Aug. 4) the new Government at once resigned. 1858

'The concluding circumstances of this crisis,' says Mr. Young, 'moved speedily to accomplishment. His Excellency sent first for Mr. Galt, who was an impossibility as Premier, having no followers. He then applied to the late Attorney-General East, Mr. Cartier; and grim must have been the smile on the face of Mr. John A. Macdonald when his old *confrere* asked his assistance to reinstall themselves and their former col-

[1] Which had been selected by the Queen for that purpose.

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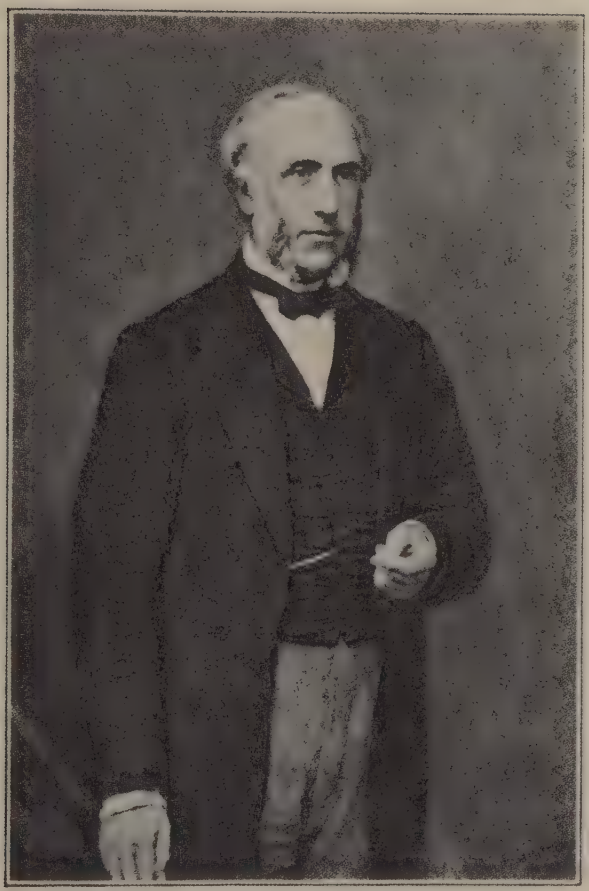
leagues in office. Except that it was called the Cartier-Macdonald, instead of the Macdonald-Cartier Administration, it was simply the former Conservative Government restored. There was no change of policy and none in *personnel*, except that Mr. Galt became Inspector-General in place of Mr. Cayley, and Mr. Geo. Sherwood took the place of Mr. Loranger.

'All was plain sailing for the resuscitated Government save for one initial difficulty. This was awkward enough ; but it was surmounted in a most ingenious, though an unusual manner. Under Canadian, as under British law, every member who accepts office in a Cabinet thereby vacates his seat in Parliament, and has to be re-elected. The members of the Brown-Dorion Administration had all vacated their seats; and, according to the usual constitutional practice, the Macdonald-Cartier Ministers were in the same position. But they managed, nevertheless, to maintain their places in Parliament without re-election in the following way:—

'A clause had been added some time before to the Independence of Parliament Act, enabling a minister of the Crown to change from one portfolio in a Cabinet to another without going back to his constituents for re-election. Under cover of this clause the members of the Cabinet met in a body shortly before twelve o'clock, midnight, of August 6, 1858, and took the customary oaths to perform the duties of certain Departments in the Government (which they had



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no intention of holding), and fifteen minutes after 1858
that witching hour were transferred back again to the Departments which they had held prior to their resignation, and the duties appertaining to which they again solemnly swore to perform.'

In his *Memoirs of Sir John A. Macdonald* Mr. Joseph Pope ingeniously suggests that this 'Double Shuffle,' as it has ever since been called, was a proceeding analogous to the acceptance of the 'Chiltern Hundreds' by a member of the English House of Commons who desires to resign his seat in Parliament. But the cases are by no means similar. The gravamen of the charge against Mr. Cartier and his colleagues is not wholly or chiefly that under cover of a loosely-drawn section they violated the plain intention of an Act of Parliament in order to escape the risk, expense and loss of time which a new election would have entailed though this, in itself, is sufficiently discreditable;[1] but that which really shocked the moral sense of the country was the fact that these honourable gentlemen assembled in the Council Room of the old Parliament Buildings at Toronto at fifteen minutes before midnight on August 6, 1858, and there solemnly swore before Almighty God that they '*would execute* faithfully and impartially, without fear, favour or affection,' the duties of offices upon

[1] Mr. Gladstone sadly tarnished his reputation, and barely escaped Parliamentary censure when he juggled in a somewhat similar fashion with Acts of Parliament, in the appointment of Sir Robert Collier to the Judicial Committee of the Privy Council, and of the Rev. Mr. Harvey to the Rectory of Ewelme. (Morley's *Gladstone*, ii, 382-397.)

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which they had no more intention of entering than they had of accepting the Crown of the United Kingdom of Great Britain and Ireland. Half an hour afterwards they swore themselves back again into their original offices; and their own feeling that the transaction was one of which they ought to be ashamed, is further indicated by the fact that the false swearing-in was done just before midnight, and the real oaths of office were taken a few minutes after that hour, in order that the two transactions might appear to have occurred on different days. The taking of the first set of oaths was running dangerously near to a breach of the Third Commandment; and if any touch of melodrama was needed to add to the absurdity of the solemn farce it was thus furnished by the Ministers themselves.[1]

Mr. Brown and his colleagues in the Brown-Dorion Ministry—at least such of them as had been members of the Legislative Assembly—were now, as Mr. Pope gleefully remarks, 'outside the Legislature for the remainder of the Session.' They had accepted offices of emolument (?) under the Crown, and had thereby vacated their seats in Parliament. The Cartier-Macdonald Ministry, having thus got rid of nine of their most formidable antagonists, were able to hurry through the remaining Bills of the Session and to prorogue Parliament on August 16, 1858.

[1] The Independence of Parliament Act has since been amended so as to provide that the section which allows a Minister to change his portfolio shall not apply if the Administration of which he was a member has resigned, and a new Administration has taken office. (41 V. c. 5.)

HIS SECOND ELECTION

Mr. Mowat returned to his constituents in South Ontario for re-election. He was opposed by Mr. William Laing, a resident of Whitby, and a large grain-buyer, well-known and popular throughout the Riding. Mr. Laing did not announce himself as an out and out supporter of the Cartier-Macdonald Government. He posed rather as an independent candidate. In his address he says : 'On the leading political questions before the country I hold those sentiments common to all true Upper Canadians. I am opposed to separate schools. . . . A principle so just in its nature as that of representation according to population cannot long be denied to the people of Upper Canada; and I shall strongly advocate and support every measure for the accomplishment of that object. . . . If elected I shall enter Parliament prepared to support all good and just measures . . . without regard to the source from which they may emanate.' 1858

Mr. Laing was a more formidable opponent than Mr. J. C. Morrison had been, and the contest on both sides was keenly conducted. Nevertheless Mr. Mowat was again successful; and at the close of the polling, which took place on August 29-30, 1858, he had received 1343 votes as against 853 polled for Mr. Laing, thus giving him a majority of 490.

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M.P.P.—POSTMASTER-GENERAL

AS compared with the Session of 1858, that of 1859 was comparatively tame and uneventful. It lasted little more than three months, viz.: from Jan. 29 to May 4. That hardy perennial—the seat of government question—blossomed again and gave rise to several amendments to the Address, on all of which the Government was sustained by majorities varying from 5 to 89. 1859

It was in this Session that Mr. Mowat made his first essay as a law reformer. He introduced a Bill enabling Judges to try civil actions without a jury, in case both parties to the action agreed that the jury might be dispensed with. The measure did not receive the approbation of the Government; and though it was read a first and second time, and referred with other Bills to a Special Committee, it was there quietly shelved.

On November 9, 1859, a Convention of the Reformers of Upper Canada met at the St. Lawrence Hall, Toronto, to consider the political situation of the Province, and take counsel as to what constitutional changes were desirable and practicable. The Convention was attended by nearly 600 delegates, selected by local Reform organizations, and representing nearly every constituency in Upper Canada. Among the resolu-

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Mr. Mowat made a strong speech in opposition to the amendment. He said :—

'It requires little to convince this assembly or the people of this country that we can no longer delay the making of some change in the constitution. . . . The feeling in favour of representation according to population has for some time been general, and there has been an impression, as strong as any that ever was formed, that if the Union is to continue in its present form, that is the only principle that can be regarded as just or equal. It is not because I have less zeal for that principle than I have hitherto had, that I now come forward to advocate a change in—or, I should say rather, an addition to—the platform we have assumed in the struggle

now making in favour of good government. 1859
The question has been put—and it was right that it should be put—as to the necessity which exists for making any such alteration. We have fought long for representation according to population. . . . But we have discovered that it will take a much longer time than many of us have supposed to secure the recognition of that principle. . . . It is certain that there is the most resolute determination on the part of Lower Canada to resist this demand; and if we ask for dissolution pure and simple it will take a long time to remove the obstacles thus presented. The only alternative is an appeal to the Home Government; and we ought not to call upon them unnecessarily. We may be driven to it, but it should be the last resort. We must first try to settle our difficulties among ourselves. Again, it is doubtful whether the Home Government would interfere to give us representation according to population till after a long continued application; and in the meantime what are we not enduring ? If we were only well governed by Lower Canada; if she gave us good laws, such as we desire, we might bear with the power she has of preventing us from making such laws for ourselves—we might afford to wait. But she does not do so. (Cheers.) The Lower Canadians impose upon us laws which we do not want. The legislation of the last two years has been legislation directed against Upper Canada, and in favour of Lower Canada. (Cheers.)

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. . . It is plain that if we desire the interests of this country, if we wish to secure ourselves against bankruptcy . . . . we must look out for some other measure than representation according to population in order to obtain relief. . . . Is there then, a shorter method to obtain those rights of which for some time past we have been deprived ? That is the question to be decided. Before the period of Responsible Government there was a state of things in this country which no free people could endure. I do not sympathize with those who tried to alter it by force, but I do feel that when an eminent English statesman said our Government was one for which, had he lived under it, he would not fight, the state of things must have been very deplorable indeed. But let us ask ourselves if our present condition is not worse than that of which Lord Sydenham made the observation I have quoted,—when the country was ruled by the Family Compact; when the legislation desired by the majority of the people and of their representatives was checked by a party with whom the people did not sympathize, and when the Executive Government was in the hands of that party. I ask if the state of things which now prevails is not still worse ? It is true that we were not then ruled by the majority, but by the minority; but, after all, it was an English influence which prevailed. Our affairs were controlled by those who should not have managed them; but at least they were controlled by men

living among ourselves, brought up as we were, 1859
understanding our language, reading our newspapers and to whose minds we had access through these and through our speeches. But those who rule us now are of another language, another race, another country; knowing nothing of Upper Canada, with other views, other sympathies and other interests. Is there any comparison between the condition of things then and now? If, in the minds of English statesmen—with whom, however, I do not agree—there was enough to induce them to say that men were justified in resisting then, what are we to say of our condition now?

'Our remedy, however, is a constitutional one; but we do right to remember and reflect upon the evils that we suffer in order that we may not be heedless of the remedy. As freemen we cannot help loving liberty, and what we have to do is to see whether by constitutional means we may not obtain the reform of our grievances, and that by a course shorter than the one by which we have hitherto been following. Without going into all these evils and remedies, I will say a word or two here of the two remedies between which I believe Upper Canada is now hesitating, viz.: a separation from Lower Canada at all hazards, or a separation which would continue the connection for some purposes, with freedom from its controlling influence in regard to others. . . . As to a dissolution of the Union pure and simple there are immense difficulties. . . . There are the geo-

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graphical relations of the two provinces, the tariff, the navigation of the St. Lawrence, and the debt, all to be arranged. If the relations between the two provinces before the Union created bad feeling, the antagonism of that day would be greatly magnified now, when we possess public works not then in existence, and when the population, wealth and trade of Upper Canada are so enormously augmented. Is it likely that all these things can be arranged in any reasonable time? There are doubtless many in Lower Canada who, notwithstanding their favourable position, are in favour of a repeal of the Union; but they simply desire a return to the former state of things. There is no likelihood of the majority in that part of the country consenting to the necessary arrangements within a time shorter than would be requisite even to obtain representation by population; and, of course, without violence, there is only one other method than persuasion, and that is by means of an appeal to the Imperial Government. But every one who has studied the feeling of the British people, or the dealings of the British Government with this country, must be satisfied that that Government will not like the Union to be repealed. Its repeal will certainly take a long time. I am not satisfied that it can be accomplished at all.

'But supposing the dissolution of the Union to be that desirable thing at which we should aim, is not the shortest way to accomplish

even that, the obtaining in the first instance of this federation, which will be more easily carried? The statesmen of England are not opposed to federation in the Maritime Provinces, and they will therefore not be against it here. There is also strong reason to think that Lower Canada is prepared to favour the scheme; for though the Lower Canadians have the power now, they feel that the unjust exercise of it may come home to them; that the more they abuse their power now, the more we may be disposed to retaliate when we shall have the power in our hands. Federation will vest the local government of each part of the two provinces within itself, so that we may get by it all the advantages of dissolution without its difficulties. As to the subject of expense, there can be no doubt that in Upper Canada, at least, the federal system will be much cheaper than the present one; and, on the whole, looking at the two systems together, and even regarding them from the point of view taken by those who are in favour of dissolution, I can see no objection whatever to the federation now proposed.' 1859

Mr. Mowat's arguments powerfully influenced the Convention, and after a speech by Mr. George Brown, Mr. Sheppard withdrew his amendment and the resolution was carried, *nullo contradicente*, the words 'some joint authority' being substituted for 'general government.'

Before adjourning, the Convention formed a 'Constitutional Reform Association' and appointed

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a Committee to draft an address to the people in support of the principles expressed in their resolutions.

'There can be no doubt,' says Mr. Dent,[1] 'that this address did much to pave the way for the great scheme of Confederation—a fact which will be clearly apparent to any one who will take the trouble to compare the text of the resolutions of 1859 with the B. N. A. Act of 1867.'

During the winter of 1859-60 Mr. Mowat suffered one of the great griefs of his life, in the death of his father.

Mr. John Mowat died at Kingston on Feb. 4, 1860. Sir Oliver says :—

'It is commonly alleged that he was a Tory. He was certainly not a Radical, as the word was then understood—or misunderstood—by the Tories. He was a lifelong friend of Sir John A. Macdonald, but he favoured responsible government long before we had it in Canada, and his sympathies were entirely against the High Church Tories in their exclusive claim to the clergy reserves. From time to time also he supported as candidates for Parliament men opposed to the Hon. Christopher A. Hagerman, for many years M.P.P. for Kingston and leader of the Upper Canadian Tories.'

Mr. Mowat had been one of the original trustees of Queen's University, and was for nearly forty years an elder in St. Andrew's Church,

[1] *The Last Forty Years*, ii, 397.

Kingston, having been ordained to that office by the Rev. John Barclay in 1822. He never lost his interest in military affairs, and I find in the list of the Volunteer Militia, forming part of the garrison of Kingston during the troubles of 1837-8: —'*At Tete du Pont Barracks*—A. Company, Artillery, Captain, D. J. Smith; Lieutenant, John Mowat; Ensign, Samuel Mucklestone.' In July, 1847, he was gazetted as captain in the 1st Frontenac Militia. 1860

Among the memoranda which Sir Oliver has left are the resolutions passed on his father's death by the Session of St. Andrew's Church, Kingston, the St. Andrew's Society of that city and the Board of Queen's University. These I shall not here reproduce, but I think he would have desired that his biography should contain the reference to his father in the *Kingston News* of February 7, 1860 :—

'The remains of John Mowat, Esq., were on Tuesday conveyed to the cemetery at Waterloo; and the number that joined in the funeral procession, as well as the sorrow that sat upon every countenance, bore striking testimony to the estimation in which he was so deservedly held. He was one of our oldest and most distinguished citizens, and his removal from among us leaves a blank which will not easily be filled. Long engaged in business in this city, his whole dealings were marked by unbending integrity. Kindly in his nature, he was ever ready to reach forth a helping hand to struggling worth; and

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though sometimes deceived in those whose cause he espoused, his benevolence continued unwearied to the last. Few men have been larger-hearted or more public-spirited. A member of our religious societies, a leading elder in the church to which he belonged, and a trustee of Queen's College, his loss will be severely felt by all those who were associated with him; for, while sound in judgement, he possessed a fervency of spirit which made him willing to spend himself and be spent in all that he undertook.'

Another testimony to Mr. Mowat's kindliness of heart appears in an incident related by Mr. William Buckingham and the Hon. G. W. Ross, in their *Life and Times of the Honourable Alexander Mackenzie*. The story is briefly this :—

In the early summer of 1842 there came to Kingston from Logierait, in Perthshire, in search of employment, a young Scottish stone-cutter named Alexander Mackenzie. No one could then have foreseen in this lad of twenty, with no assets but his brains and his stone-cutting tools, the first Liberal Prime Minister of the Dominion of Canada. Mr. Mackenzie was employed by a contractor named Schermerhorn to work as a stone-cutter upon some buildings then in course of erection,—including, I think, St. Mary's Cathedral—and he was paid by the promissory notes of his employer. When the notes fell due it was found that Schermerhorn was insolvent and that his notes were worthless. The loss of nearly all his first summer's earnings

at a time when every dollar was of consequence was a heavy blow to the lad. Mr. John Mowat, hearing of the circumstances, offered Mr. Mackenzie the use for the winter of a farm in the township of Loughborough, distant from Kingston about twenty-two miles, where, with the Neil family (one of whom afterwards became Mrs. Alexander Mackenzie), he might at all events tide over the present distress. They were to pay for the land—or for the use of it—as and when their prospects brightened and their resources permitted. The future Premier of Canada spent his first winter in this country in a log house, 18 by 16, covered with boards, through which—as he often afterwards said—he had a fine opportunity, on clear nights, of studying astronomy. He never forgot the kindness which he had received from a man to whom until then he had been personally almost unknown; and many years afterwards I heard the Prime Minister of Canada express to the Prime Minister of Ontario his sense of the obligation thus conferred upon him. 1860

But by far the best and most interesting memorial of John Mowat is contained in a series of letters written by him between 1841 and 1860 to his son, and which Sir Oliver carefully preserved. The relation between the father and the son must have been like that of David and Jonathan—unusual sixty years ago, especially in a Scottish household. The letters touch upon all sorts of subjects,—politics, literature, commer-

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cial investments, the affairs of the Church, of Queen's University, etc.—but chiefly they are just gossipy descriptions of intimate family events; such letters as a man (except Mr. Gladstone) might have written to his most intimate friend. They enable one perfectly to realize the man who wrote them: the dignified Presbyterian elder, the cautious, progressive and successful man of business, appears in them as the genial companion and comrade, interested in all those little domestic happenings which go to make up the trivial round of family life, absolutely free from any shadow of affectation, pomposity or formalism, with a keen and prevalent sense of humour and a charity for those of different religious and political views, rare even in these more tolerant days, and at that time rarer still. If space permitted I should be glad to quote from these letters, but what I have said as to their general characteristics may help others—as they have helped me—to understand whence Sir Oliver Mowat derived at least a part of that 'broad-minded Liberalism,' both political and religious, which Mr. Graeme Mercer Adam has so justly attributed to him in the extract which I have placed at the head of the preface to this book.

The parliamentary records of 1859-1862 inclusive are but a barren field, both for the historian and the biographer. The Cartier-Macdonald Administration, though their popularity in Upper Canada was steadily on the wane, nevertheless continued to hold office by the grace of that

invincible and inconvincible phalanx of Lower Canadian members who loyally and obediently followed Mr. Cartier. Motions of want of confidence were made each Session; sometimes on the old questions of 'rep. by pop.' or the location of the seat of government; sometimes on fresh topics, such as the unwise and unauthorized advance of more than $1,000,000 by Hon. Mr. Galt to the Grand Trunk Railway Company without authority from Parliament; or the retention in the Cabinet of the Hon. J. C. Morrison for more than two years, after he had five times failed to obtain a seat in the House—but whatever might be the question, or however strong the arguments of the Opposition, Mr. Cartier had one curt and conclusive reply; and his favourite expression, 'Call in de members,' has become historic. 1860

During the Session of 1860 Mr. Mowat introduced two Bills, one relating to the rights of innocent occupants of land under defective titles, which passed through the Legislative Assembly, and was sent up to the Legislative Council, but never heard of again. He afterwards introduced the same Act into the Legislative Assembly of Ontario, where it was passed as 36 V. c. 22, s. 1; and it now forms s. 30 of the R.S.O. (1897), c. 119.

Another Act, which he introduced during the same Session, for quieting titles to real estate in Upper Canada, also passed through the Legislative Assembly but was killed in the Legislative Council. He introduced it again in 1861, in 1862

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and in 1863, but in each of these cases it failed to pass. In 1865, however, after Mr. Mowat had become Vice-Chancellor, he induced Sir John Macdonald to take up the Bill and it was passed as 29 V. c. 25. It is now 'The Quieting Titles Act.' R.S.O. (1897), c. 135.

The Sixth Parliament was prorogued on June 10, 1861, and the general elections took place during the summer. Mr. Mowat returned to South Ontario for re-election. He was opposed by Mr. James Rowe of Whitby, whom he defeated by a majority of 667. He also ran in Kingston against the Hon. John A. Macdonald, but was there defeated by 311 votes.

The following letter written about this time to the late Mr. Ernestus Crombie shows how strict was Mr. Mowat's code of ethics in relation to matters which might come before him as a member of Parliament. It was no light thing in those days to refuse briefs from the Grand Trunk Railway Company; but Mr. Mowat was able, a few years afterwards, when that Company's application for an increased postal subsidy came before him as Postmaster-General, to congratulate himself on being entirely free from any such entangling alliance :

'Toronto, Oct. 15, 1861.

'Morrison v. G.T.R. Co. and others.

'Dear Sir :—

'I return the brief left at my chambers in this case with the fee which accompanied it.

'My reason for doing so is this. The Grand Trunk Railway and its affairs have occupied a prominent place in the attention of the public for some years; the country is largely interested in them, and the proper course to be now pursued by Parliament and the Executive in reference to them is a matter of very great importance to the province, and demands the most unbiased as well as most careful consideration on the part of public men; while it is regarded by a large portion of the Canadian people as *the* question of questions in our politics. It is extremely probable, if not absolutely certain, that some legislation will take place—or at all events be attempted—next Session, and perhaps there may be some action of the Government in the meantime. Under these circumstances, the more I think of the matter the more distinctly do I perceive that my being counsel for any of the parties to the present litigation may embarrass me as a member of the Legislature, or, at all events, lessen whatever influence I might have in dealing with the subject in that capacity. I think it my duty to avoid both these results as far as I can; and all the more from recollecting that while we have complained of some of the legislation which has already taken place on the subject of the Grand Trunk Railway and of the mismanagement of its affairs, the people have, rightly or wrongly, ascribed a large share of the evils complained of to the circumstance of so many members of Parliament having all along been connected 1861

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with the Company, professionally and otherwise.

'I referred to these considerations when you last year applied for my opinion on certain legal questions which had arisen, or were expected to arise; but through the influence and argument of the other counsel employed in the case, I was led to think that to the extent of giving a professional opinion on purely legal points, involving nothing of advocacy or of confidential communication of facts, I might safely act. But I am satisfied that I should do nothing more than I have already done.

'I am aware that the view I thus take of my duty may not be in entire accordance with the ordinary practice of English counsel who are at the same time members of the British House of Commons. But the case is so peculiar, and the circumstances of England and Canada are so different, that we cannot in such a matter implicitly follow ordinary English practice.

'Since giving the opinion referred to in conjunction with your other counsel, I have, as you are aware, been a good deal absent from Toronto, first in attending my parliamentary duties in Quebec, and afterwards in the engagements connected with the late general election. You have therefore for many months had no occasion or no opportunity of calling for my professional services; and I have no doubt that the gentlemen who have so far acted without me as your counsel will continue to do ample justice to the cause of your clients without any assistance from me.

'Of course, as I do not feel at liberty to act for your clients in the suit, neither can I act against them.' 1862

The Session of 1862 opened at Quebec on March 20 with unusual pomp, partly because it was the first Session of a new Parliament, and partly because of the presence of a new Governor-General, Charles Stanley, Viscount Monck, of Templemore, in the County of Tipperary, Ireland, who now occupied the throne which Sir Edmund Head had vacated in the previous October. The legislation of the Session was unimportant; but as days went by the influence of the Government perceptibly declined, and the crisis came upon the second reading of a Bill which had been introduced by Mr. John A. Macdonald for the reorganization of the Militia. Owing to the defection of several members of Mr. Cartier's usually solid Lower Canadian phalanx, the Bill was defeated by 61 to 54, although the Government had a majority of seven among the Upper Canadian members. On the following day the Cartier-Macdonald Administration came to an end, after having, under the various aliases of Cartier-Macdonald, Taché-Macdonald and MacNab-Taché,—with frequent changes of *personnel* but always under the control of one directing mind—held office almost continuously since Sept. 11, 1854.

His Excellency, to the surprise of many, called upon Mr. John Sandfield Macdonald to form a new Administration, which he succeeded in doing on the Queen's Birthday, 1862, taking in as the

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Mr. Mowat was offered a seat in the new Cabinet, but he declined on two grounds: first, because the (to him) vital question of representation by population was to be treated by the new Government as a 'close question' (this being the price which Mr. Sandfield Macdonald had to pay for the support of Mr. Sicotte and his colleagues from Lower Canada); and secondly, because he had no confidence in the panacea which Mr. Macdonald proposed as a substitute, viz.: government on what was known as the 'double majority' principle, according to which no measure specially affecting either province was to become law without the concurrence of the representatives of that province. This plan Mr. Mowat considered practically unworkable, and within less than a twelve-month the unanswerable logic of events proved the correctness of his judgement. He was nevertheless willing, as were many other Upper Canadian Reformers, to give the Government a general support except on the two questions of representation by population and separate schools. The Opposition, however, were not slow to take advantage of the position in which such lifelong advocates of representation by population as the Premier and his Upper Canadian colleagues had now placed themselves. On Feb. 26, 1863, Mr. Matthew Crooks Cameron moved, and Mr. Angus Morrison seconded, as an

amendment to the Address, a motion in favour of representation by population, couched in the very words of one which had been proposed during the previous Session by the Hon. William McDougall and seconded by the Hon. M. H. Foley, now both members of the Cabinet, and for which two other Ministers—Messrs. Howland and Adam Wilson—had then voted. It must have been a bitter pill for the new Premier and his colleagues to vote down the very motion which they had drafted and supported less than a twelvemonth before; but the price of Mr. Sicotte's co-operation had to be paid and they manfully swallowed the dose. Of course Mr. Mowat and the other Reformers of the 'Old Guard' voted for the resolution, though it was in effect one of non-confidence in Mr. Sandfield Macdonald's Government; but Mr. Sicotte secured reinforcements from the Lower Canadian Conservative camp and the Administration was sustained by 64 to 42. 1863

Another dangerous rock ahead of the Macdonald-Sicotte Administration was the Separate School Bill—ingeniously, but not ingenuously, entitled 'An Act to restore (*sic*) to Roman Catholics in Upper Canada certain rights in respect of Separate Schools.' The passing of this Act was part of the compact under which Mr. Sandfield Macdonald had formed his Government. Here again, those with whom he and his Upper Canadian colleagues had hitherto acted voted to turn him out of office. The Bill was carried, but against a strong Upper Canadian majority; and the futility

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of the double majority principle once more became apparent. It was evident that the crisis could not long be delayed. It came on May 8, 1863, in the form of a direct motion of want of confidence made by the Hon. John A. Macdonald, and seconded by the Hon. George E. Cartier. The Government were beaten by 64 to 59; of the Upper Canadian members 31 voted for and 28 against the motion; of the Lower Canadian members 28 for and 38 against it. Six members were absent and one riding unrepresented.

The Ministers advised a dissolution, which Lord Monck promptly granted, in spite of most factious opposition on the part of Mr. John A. Macdonald and his friends, who succeeded in preventing the vote of supply by a motion to adjourn the House.

The Seventh Parliament of Canada came to an end on May 13, 1863. Before appealing to the country Mr. J. S. Macdonald deemed it expedient to take to heart the lessons of the past few months, to alter in some respects his policy and to reconstruct his Cabinet. As to policy, he threw over once and for all the 'double majority' principle, to which he had long been so wedded, and—still more important in the eyes of Upper Canadian Reformers—he made representation by population for the first time an open question. As to *personnel*, he got rid at one fell swoop of the whole Sicotte wing of the Administration, and brought in the Hon. A. A. Dorion as leader of the Lower Canadian section of the Cabinet.

These changes having been determined upon, he again offered Mr. Mowat a seat in his Cabinet, and this time the offer was not declined. Only four Upper Canadian Ministers remained in office, viz.: the Premier, Messrs. Howland, McDougall and Fergusson-Blair. The place of Mr. Foley as Postmaster-General was taken by the Hon. Mr. Mowat. The Hon. Adam Wilson retired to a seat on the Bench, and his portfolio was assumed, for the time, by Mr. Lewis Wallbridge. 1863

The elections were held during the month of June. Mr. Mowat was again opposed in South Ontario by Mr. William Laing, whom he had defeated in 1858. The contest all over the country was extremely keen, and in many constituencies very bitter. Mr. Sandfield Macdonald was accused of having no definite policy except the lust of power, and many Reformers who had supported him before his coalition with Mr. Sicotte now looked upon him askance. The attitude of the majority of moderate Reformers is perhaps best described in a speech made by Mr. Mowat on June 1, 1863, at his nomination in South Ontario.

He said that this was the first time he had appeared before them except as an Opposition candidate. It was usual on such occasions for candidates to make some reference to the state of parties during the time that had passed, and to the issues which from time to time had occupied public attention. Something of this kind he would endeavour to do. He then reviewed

Chap. V the history of the Reform party from 1857, when he first entered Parliament, until the present time, pointing out the difficulties which had arisen in trying to carry out the principle of representation by population. In conclusion he said:—

'Though there is much sympathy and common feeling, and much of common purpose and principle between the Liberals of Upper Canada and the Liberals of Lower Canada, there are also differences between them, chiefly of a sectional kind. But Mr. J. S. Macdonald was desirous of establishing another Liberal Government, and to prevent the return to power of the men who had so long abused it. For this purpose he determined to abandon the system known as the double majority rule, and the propositions on which was based the Intercolonial Railway scheme; also the proposal to submit the question respecting the Grand Trunk postal subsidy to arbitration, to which the Liberal party was opposed because the experience of the British Government had proved that the awards in such cases are always against the Government, and frequently to an enormous amount. Then there came up the question of representation by population. I regret to say that we found no party in Lower Canada and no leading public man willing to join us in obtaining this reform, or any other constitutional change, while Upper Canadians were as little disposed to unite upon it as they were in 1858. The question then had to be considered whether the Liberals of Upper

Canada were willing to join those of Lower Canada in doing all the good they could in regard to all matters within the power and influence of the Government, leaving representation by population an open question, *i.e.*, leaving every member of the Cabinet and of the party to go for or against it as his convictions might direct. The Liberal party in Upper Canada had not desired to take that ground. They were anxious to stand by the maxim that they would support no Government not able and willing to give us representation by population. But after five years of toil and struggle, and in consequence of the events which have occurred during that period, some of which I have already referred to, it had become clearly impossible to form a Government from either side of the House on that basis. If, under these circumstances, we refused to join the Liberals of Lower Canada now, on any basis on which they could stand, we found the result would be that we should get no reform at all, besides losing all our Lower Canadian allies. This matter received the earnest consideration of the Liberal members at Quebec, and they unanimously came to the conclusion that, in the circumstances, it was the duty of the party to modify or to suspend the rule they had adopted in 1859, excluding themselves and their friends from participating in a Government in which representation by population was an open question. They came to this conclusion upon the ground that otherwise Upper

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Canada not only would not get representation by population any sooner, but that she would get nothing else. In fact, a refusal at this time to form a Liberal Government on a Liberal basis, but leaving representation by population an open question, would only have had the effect of calling back the Cartier party to misgovern the country for nobody can tell how many years more. It is surely common sense, then, when we found the maxim we had adopted in 1859 to stand in the way of every reform, instead of advancing any reform, that as men of honesty and principle—as men really anxious to remove and to provide against existing evils—we were bound to seek some other method of giving effect to those principles. The end to be gained is the important matter; the means are less material. We desired financial reform, administrative reform, and legislative reform; and we desired constitutional reform as the way of obtaining and securing all these other reforms. If we were honest in adopting in 1859 the principle which I have mentioned for the purpose of getting these reforms, then the principle which led the party to adopt it should lead them now to acknowledge the absolute necessity of departing from it. A general placed at the head of the forces of his country must adopt a plan of campaign against the enemy. But suppose he finds afterwards that, in consequence of unforeseen events and a change of circumstances, it is impossible to carry that plan out, would he not be wise to change it?

Would he be doing his duty to his country if he did not change it? What should we think of him, if he not only persevered in his original plan, after ascertaining that by means of it he would not be able to overcome the enemy, but that by adhering to it he would be overcome? Would we not pronounce him a traitor? 1863

'Now, what is the position of the Reform party? We want constitutional and other reforms. We adopted a plan of campaign by which we hoped to obtain them, but subsequent events have shewn that by means of it we cannot win. Should we not, then, be traitors to our country, unless we make such a change in our plan of operations as may give us a better prospect of success? This is what the Liberal party of Upper Canada have now done through its representatives in both Houses at Quebec. And this is the reason why I have been asked by the representatives of the Liberal party to consent to occupy the position I now hold as a member of the new Government.'

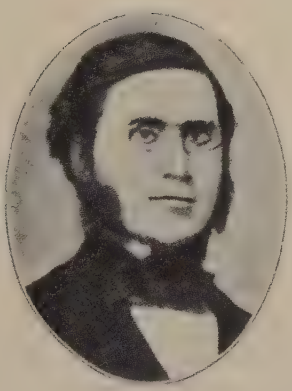
The views thus enunciated prevailed, not only in South Ontario but generally throughout Upper Canada. Mr. Laing was defeated by 479 votes; and when the returns came in it was at first supposed that the Macdonald-Dorion Government had won a decisive victory all along the line. But this notion proved to be delusive. Although they had gained in Upper Canada, where about 43 Ministerialists were returned as against 22 of the Opposition, they had lost in Lower Canada to almost the same extent; and, in the result, the

Chap. V problem of effective government seemed as insoluble as ever.

The new Ministers nevertheless applied themselves with energy and assiduity to carry out the reforms indicated in their ante-election promises. They provided for the Finance Department a fresh system of checks upon unauthorized expenditure. They drafted a more stringent form of contract for the construction of public works. They dismissed several unnecessary officials, and, generally, carried out a policy of judicious retrenchment in the public service.

The new Postmaster-General found himself, at the outset of his official career, confronted by a problem, the solution of which his predecessors had either evaded or bungled, viz.: a claim by the Grand Trunk Railway Company for a large increase in their postal subsidy.

It was a ticklish question. The Grand Trunk Railway, extending as it then did from Riviere du Loup to Sarnia, and running through more than half the constituencies of the province, was in those days of open voting a factor to be seriously considered in any general election. The votes of those directly or indirectly employed in and about its stations, round-houses, work-shops and rolling-mills might turn the scale in any constituency, and the company made no secret of its attempt to control—or at all events to influence—its employees. Nor were its officials ignorant of the strength of their position, or of the opportune moment when a demand might be made at the



HON. OLIVER MOWAT, Q.C.

Postmaster-General of Canada

sword's point upon a Government whose very existence hung upon a slender thread. The claim for an increased subsidy to the railway company was in this instance made by the new managing director, a recently imported Englishman with a profound contempt for 'those dem'd colonists.' Most of us have read some account of the manner in which the 'Alabama Claims' were manufactured by American ingenuity for the Geneva Tribunal, but Mr. Charles Pinckney Sumner, late Senator for Massachusetts, might have sat at the feet of Mr. Charles John Brydges as an inventor and manufacturer of claims.[1] 1863

Moreover, Mr. Brydges was entirely unhampered by any consideration as to whether the

[1] In the discussion . . . Mr. Charles Sumner—a man of some great qualities, but too often the slave of words where he thought himself their master—made in the U. S. Senate an extravagant speech against the British Government, assessing the claim of the United States upon this country on principles that would have raised it to the modest figure of some £400,000,000 sterling, or (as Mr. Gladstone estimated it) £1,600,000,000 . . . Besides compensating individuals for depredations, we were to pay for the cost to America of chasing the cruisers; for the transfer of most of the American marine to the British flag; for enhanced insurance; and generally for the increased difficulty of putting down the Rebellion . . . In a memorandum to Mr. Fish, dated January 17, 1871, Mr. Sumner submitted a singular species of political syllogism. He desired nothing so much, he said, as that entire good-will should prevail between Great Britain and the United States, and that the settlement should be complete. Now the greatest trouble and peril in the way of complete settlement was Fenianism; Fenianism was excited by the proximity of the British flag just across the Canadian border; therefore, the British flag should be withdrawn from the entire Western Hemisphere, including the islands, and the American flag should fly in its stead. In conformity with this tight and simple chain of reasoning, Mr. Fish threw out a hint to Lord De Grey that the cession of Canada to the United States might end the quarrel. The English envoy contented himself with the dry remark that he did not find any such suggestion in his instructions.'—Morley's *Gladstone* ii, 398-401.

Chap. V • statements upon which his claims were based had or had not the slightest foundation in fact. It appears from his correspondence with the Post Office Department that he relied chiefly upon the following considerations .—

1. That the Grand Trunk Railway had been constructed upon the faith of representations made by the Province of Canada, and set out in the company's prospectus, that it would be a paying investment, and that a return of 11½ per cent. upon the money invested would be guaranteed by the province.

2. That, in consequence of the railway having been built by the company, the province had saved a large sum of money.

3. That the province derived its advantage from this and other railways at the expense of the shareholders of the company.

4. That the Post Office revenue had been greatly increased through the facilities afforded by the railway.

5. That owing to the severity of our Canadian climate the expense of working the railway was greater than that of any United States road, while, on the other hand, its earnings were smaller.

To this and the other arguments put forward by Mr. Brydges, the new Postmaster-General replied in a document, which, though it has been embalmed for forty years among the sessional papers of Parliament, is as fresh and trenchant as a *Times* editorial of to-day. He took up the contentions of the company *seriatim*, and

handled them without gloves. As a masterly review of the history of railway construction in Canada, and as a capital specimen of terse and lucid argument, sometimes serious, sometimes humorous, and not infrequently sarcastic, the paper deserves a better fate than to be buried in one of those blue books which nobody ever reads. I have given in Appendix II some illustrative extracts from it. 1863

Another important question, which arose and was determined during Mr. Mowat's Postmaster-Generalship, related to the ocean mail service between Canada and Great Britain. In 1860, under the Postmaster-Generalship of the Hon. Sidney Smith, a contract had been made with the Montreal Steamship Co. (Allans) for a weekly postal service between Liverpool and Quebec or Montreal, during the season of the navigation of the St. Lawrence, and between Liverpool and Portland during winter; and the company was to call, receive and land the mails at such ports in Ireland and in the St. Lawrence as the Postmaster-General might from time to time determine. The voyage on the outward passage to Liverpool was not to exceed fourteen days, and on the homeward passage to Canada thirteen days, on an average of the trips performed during each three months. Owing largely to circumstances over which the Allans had no control, the service became unsatisfactory. Between the date of the contract, April 6, 1860, and its cancellation by the Government on August 13, 1863, upon the

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recommendation of Mr. Mowat as Postmaster-General, the Allans lost no less than four ships, all on the outward voyage from Canada to Britain —the 'Canadian,' on June 4, 1861, after passing the Straits of Belle Isle; the 'North Britain,' in November of the same year near Migan in the Gulf; the 'Anglo-Saxon,' on April 27, 1863, near Cape Race, and the 'Norwegian,' on June 14, 1863, at St. Paul's Island at the mouth of the St. Lawrence. There were also numerous cases of delay in starting; but the answer to several of these was that the ships had been detained by order of the Postmaster-General because the Canadian mails had not arrived. There was much sympathy in Canada for the Allan Company, but the Postmaster-General thought it on the whole desirable to take advantage of the clause enabling him to cancel the contract and to make a new one, which would secure a better service. This he did, and the new contract, dated Dec. 8, 1863, was much more favourable to Canada than the cancelled contract of April, 1860.

It was for a period of five years from April 1, 1864, and it provided for the setting apart of a post-office on board each mail steamer, and the carrying, passage free, of a postmaster who was to have charge of the mails; that in reckoning the time occupied by steamers on the outward voyage, allowance should be made for the time during which they may have had to wait at Londonderry for the arrival of the mails for Canada; that in case the average length of the outward

or homeward voyages in any three months exceeded the fourteen and thirteen days respectively allowed by the contract of 1860, the contractor should pay a penalty of £100 cy. for every 24 hours of such excess for the first 144 hours, and £200 for each succeeding 24 hours, and for every trip not performed according to the contract a penalty of £1,000 sterling. The subsidy was reduced from $416,000 a year to $218,000. The execution of this contract by the Government was authorized by Statute (27-28 Vic. c. 11). It remained in force for the full term and was renewed for another period of five years.[1] 1863

[1] For much of the information given above I am indebted to Lieut.-Col. William White, C.M.G., late Deputy Postmaster-General of Canada; and a further memorandum of his on the subject of the trans-Atlantic mail service previous to 1860 is so interesting that I have inserted it as Appendix III.

CHAPTER VI

POSTMASTER-GENERAL—VICE-CHANCELLOR

THE Macdonald-Dorion Government met the House on August 13, 1863. On the left hand of the Speaker, as leaders of the Opposition, sat two discarded members of Mr. J. S. Macdonald's last Administration—Mr. Sicotte, who had been dismissed to make room for Mr. Dorion, and Mr. Foley, who had been obliged to give up the Postmaster-Generalship to Mr. Mowat. From opponents like these no quarter could be expected, and the Premier and his new colleagues were attacked with a bitterness hitherto unsurpassed in the annals of the Canadian Parliament. They succeeded by eight votes in electing as Speaker Mr. Lewis Wallbridge, who had been Solicitor-General West in the Cabinet as originally formed; but a few days afterwards, on a want of confidence motion by Messrs. Sicotte and Foley, they escaped defeat by only three votes, and this was their normal majority during the Session. It was so small as practically to tie their hands, and only by the greatest care and forethought could any measure be carried through the House. The legislative record of the autumn Session of 1863 is indeed a barren one. There were only twenty public Acts, and of these but two, 'An Act respecting the Militia' and 'An Act respect- 1863

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ing the Volunteer Militia Force,' are of importance.

Mr. Mowat introduced a very important Bill, chiefly founded on English Statutes, to amend the law of property and trusts in Upper Canada; but he did not press it to a third reading. After his appointment as Vice-Chancellor he induced Sir John Macdonald to take it up, and it was passed as 29 V. c. 28. Nearly all its provisions still remain unaltered on the statute-book, but they have since been distributed among several different Acts. The Session lasted barely two months, and the Ministers were able to breathe again.

The second Session of the Eighth Parliament began on February 19, 1864. Although changes had meantime been made in the *personnel* of the Administration, the political situation was unaltered. The Macdonald-Dorion Government commanded a small majority of the House, but they were too weak to carry on the Government with advantage to the country or to themselves; and, after some fruitless attempts at re-construction, they voluntarily resigned office on March 21.

In this dilemma the Governor-General sent at first for the Hon. Adam John Fergusson-Blair, who had been a member of the late Cabinet. He attempted to form an Administration, but failed. Then—according to one who had exceptional means of information—Mr. Cartier was called upon.[1] If so, Mr. Cartier also failed,

[1] Buckingham and Ross, *Life of Hon. Alexander Mackenzie.*

for His Excellency ultimately had recourse to a gentleman who enjoyed in an especial manner the confidence and respect of both sides of the House, and of Upper Canadians as well as his compatriots, the Hon. Sir Etienne Pascal Taché, who (as Col. Taché) had been a member of the Hincks-Morin, the Macnab-Morin, the Macnab-Taché and the Taché-Macdonald Administrations. Sir Etienne most reluctantly undertook the task as a matter of public duty, and solely in order, as the Duke of Wellington said in 1845, 'that the Queen's Government might be carried on.'[1] 1864

According to an authority already quoted, he first made overtures to the Liberals with a view to the formation of another coalition; but these overtures were unanimously rejected, the experience of the Liberal party with the Macdonald-Cartier Administration having satisfied them as to the dangerous character of political alliances involving even the temporary suspension of the policy of each party.[2] He then called to his aid the Hon. John A. Macdonald, and entrusted him with the formation of the Upper Canadian wing of the Administration, reserving to himself the selection of the Lower Canadian Ministers. Thus he succeeded in forming a Cabinet which, though inferior in calibre to its predecessor, was nevertheless a good one, and, under more favour-

[1] 'One of the first to join him (Sir R. Peel) was the Duke of Wellington. "The Queen's Government," he said, "must be carried on. We have done all that we could for the landed interest, now we must do all that we can for the Queen." '—Mrs. Simpson, *Many Memories* p. 233.

[2] 'Buckingham and Ross *Life of Hon. Alexander Mackenzie*, p. 160.

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able auspices, might have carried on an effective Administration. But without a radical change in the constitution of Canada a Cabinet of 'all the talents, wisdom and ability of the country'[1] would at this moment have been ineffective. The dragon's teeth, sedulously sown during the past twelve years, had now matured, and borne the same crop as in the Greek fable of Cadmus. Race was arrayed against race, and religion (?) against religion. Upper Canadians had been daily told that they were being trampled under the iron heel of Lower Canadian Roman Catholics, and the catchwords of 'French domination' and 'Papal tyranny' were echoed and re-echoed by the press and from the platform. So, on the other side of the Ottawa, our French-Canadian fellow-countrymen were frightened by a bogy of no less sinister aspect. They were told that the 'stupid Orangeistes' who ruled Upper Canada desired to break up the Union, to appropriate the provincial funds, and, worst of all, to destroy '*nos lois, notre langue et nos institutions.*' As Mr. Dent truly says, 'No government, by whomsoever formed and of whomsoever composed, could feel safe. The future looked ominous, and a general feeling of insecurity permeated the minds of our public men. The constitution was on its trial; and statesmen, by no means pessimistic in their views, predicted that it would not emerge from the ordeal without serious damage.'

[1] This was the phrase applied to the second Grenville Administration formed in Jan., 1806, after the death of Mr. Pitt.

The Hon. Mr. Sicotte publicly declared that the differences between the two provinces were not unlike those which had preceded the American Civil War, and might end in violence; and the Hon. Thos. D'Arcy McGee also pointed out the elements of serious danger to the public peace.[1] 1864

The Taché-Macdonald Administration came into office on March 30, 1864, and after a recess of nearly five weeks Parliament met again on May 3. It had not been long in session before the Government were defeated by a majority of two on a motion of want of confidence. Ministers advised another dissolution, which would have meant three general elections within as many years, each as fruitless as its predecessor to break the deadlock which threatened to make all government in Canada impossible.

I need not repeat the history of the birth of Confederation: the epoch-making interview on Buade St., Quebec, between the Hon. George Brown, the Hon. Alexander Morris and the Hon. John Henry Pope on the evening of June 14, 1864, and the subsequent negotiations between Mr. Brown on behalf of the Liberals, and Messrs. John A. Macdonald and A. T. Galt on behalf of the late Ministry. All this has been written and rewritten by defter and more experienced pens than mine. It is enough to say that the result was the formation of what will always be known in our Canadian political history as the 'Great Coalition,' in which George Brown, Oliver Mowat

[1] Young, *Public Men and Public Life in Canada*, p. 198.

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and William McDougall sat down at the Executive Council table beside John A. Macdonald.

The 'Great Coalition' became a *fait accompli* on the day of the prorogation of Parliament, June 30, 1864. The Hon. George Brown became President of the Council instead of the Hon. Isaac Buchanan, the Hon. Oliver Mowat, Postmaster-General instead of Mr. Foley (who for the second time was ousted from this position in favour of his rival), and the Hon. William McDougall Provincial Secretary *vice* the Hon. John Simpson. All the other members of the second Taché-Macdonald Administration retained their portfolios.

On returning to their constituencies, Mr. Brown and Mr. Mowat were re-elected by acclamation. Mr. McDougall was defeated in North Ontario by Mr. Matthew Crooks Cameron; but three months afterwards he found a seat in North Lanark, where the sitting member resigned in his favour.

Immediately after the re-election of the new Ministers the Government diligently applied themselves to the great object of the coalition. The idea of Union had for many years been discussed in the Maritime Provinces, and, with the sanction of their Legislatures, a conference of delegates from Nova Scotia, New Brunswick and Prince Edward Island had been called to meet at Charlottetown on September 1, 1864. The occasion was felt by the Canadian Government to be opportune, and eight members of the Ministry repaired

to Charlottetown, where they were hospitably received and invited to exercise all the privileges of delegates. The result was the Quebec Conference, which met on October 10, 1864, in that historic capital. 1864

'The proceedings of the Conference were conducted, as at Charlottetown, with closed doors. As decisions were reached they were given to the public, and the results were ultimately laid before both Parliament and people. The first important step taken was the passage of a resolution affirming the desirability of the Confederation of all the provinces. This was proposed by the Hon. John A. Macdonald, and was unanimously carried amidst cheers which could be distinctly heard outside the chamber in which the meetings were held. The second resolution was entrusted to the Hon. George Brown. It outlined the form of the proposed new Constitution, which was to be of a federal character. This also was carried unanimously amidst much rejoicing.'[1]

In the discussions of the Convention Mr. Mowat took an active and prominent part, and he drafted several of the resolutions which were finally adopted, particularly those relating to the respective powers of the Federal and Local Parliaments. On October 24 he moved, 'That it shall be competent for the Local Legislatures to make laws respecting :

(1) Agriculture.

(2) Education.

[1] Young, *Public Men and Public Life in Canada*, p. 265.

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(3) Immigration.

(4) The sale and management of public lands, excepting lands held for general purposes by the General Government.

(5) Property and civil rights, excepting those portions thereof assigned to the General Legislature.

(6) Municipal institutions.

(7) Inland fisheries.

(8) The construction, maintenance and management of penitentiaries and of public and reformatory prisons.

(9) The construction, maintenance and management of hospitals, charities and eleemosynary institutions.

(10) All local works.

(11) The administration of justice, and the constitution, maintenance and organization of the Courts, both of civil and criminal jurisdiction.

(12) The establishment of local offices, and the appointment, payment and removal of local officers.

(13) The power of direct taxation.

(14) Borrowing money on the credit of the province.

(15) Shop, saloon, tavern and auctioneer licenses.

(16) Private and local matters.'

On the following day the Hon. Thomas D'Arcy McGee moved in amendment to add after the word 'education' in item (2), *Supra* 'saving the rights and privileges which the Protestant or Catholic

minority in both Canadas may possess as to their denominational schools at the time when the Constitutional Act goes into operation,' which was carried. 1864

Item 7 was amended on motion of Col. Gray (P.E.I.) to read 'Sea coast and inland fisheries.'

The consideration of item 11 was postponed, and there is no further mention of it in the minutes, but in the resolutions adopted at the close of the Conference it appears substantially in the form in which it now stands in the B.N.A. Act.

A further section (17) was added as follows: 'The incorporation of private or local companies, except such as relate to matters assigned to the Federal Legislature.' As thus amended Mr. Mowat's original motion was unanimously adopted, and is the original of sec. 92 of the British North America Act.

Two other matters, however, in which Mr. Mowat was much interested are not correctly stated in the draft minutes of the Conference left by the late Col. Bernard and since collated and published by Mr. Joseph Pope, C.M.G.[1]

One of these was the mode of appointing Senators and the term of their office. It would appear from the minutes that Sir John Macdonald's motion 'that the members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government and

[1] Mr. Pope, in his preface, admits that Col. Bernard's memoranda were meagre and imperfect, giving in many cases only the text of the motions as actually carried, and in every case omitting proposed amendments and the names of the movers and seconders.—*Confederation Documents*, p. v.

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shall hold office during life,' was unanimously adopted; but this is not correct. The Hon. George Brown was in favour of a nominative Senate, but his two Reform colleagues in the Cabinet—Mr. Mowat and Mr. McDougall—desired that the members of the Senate should be elective, and should hold office for a fixed term.[1]

Again, according to the draft minutes, Mr. Mowat moved that 'any Bill of the General Legislature may be reserved in the usual manner for Her Majesty's assent, and any Bill of the Local Governments may in like manner be reserved for the consideration of the General Government,' and that 'any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the cases of Bills passed by the said provinces hitherto; and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the General Government within one year after the passing thereof.' This, however, is certainly not the original form of Mr. Mowat's motion, which is stated to have been 'adopted after debate.' I have his own authority for saying that he desired the Provincial Legislatures to be made co-ordinate with, and not subordinate to, the General Legislature, and the power of veto over provincial,

[1] 'McDougall, seconded by Mowat, moved a resolution to make the Senate elective ; the negative vote was large. McDougall, seconded by Mowat, also moved that the twenty-four Senators assigned to Ontario should be elected. This was negatived, after much debate.'—Hon. William McDougall, quoted by Hon. James Young in *Public Men and Public Life in Canada*, pp. 267-8

as well as federal legislation, to remain vested, as it had theretofore been, in the Imperial authorities. 1864

The meetings of the Conference lasted until October 28, and resulted in the passing of seventy-two resolutions, which were all, at the last, unanimously adopted and transmitted to the Governments of the several provinces, to be communicated to their respective Legislatures.

During the sittings of the Conference (October 24, 1864) Vice-Chancellor Esten died, and a vacancy was thus created in the Court of Chancery for Upper Canada, which Hon. Mr. Mowat was asked to fill. His memorandum on the point is brief :—

'1884, October 24. Esten died and I was offered the place and urged by John A. to take it. Brown acquiesced, though reluctantly. By his desire I interviewed Howland to take my place, to which he agreed.'

Before accepting the Vice-Chancellorship Mr. Mowat consulted several of his friends; and one of the notable features of the correspondence—which lies before me—is that these friends were chosen almost equally from both sides of the House. The Hon. Alexander Morris wrote strongly advising him to accept the position of Vice-Chancellor; while on the other hand the Hon. Christopher Dunkin said 'Except for your own mere feelings' sake, I should be most exceedingly sorry to see you leave the Government to become a Vice-Chancellor. I can understand your perhaps leaning that way, but even as to yourself I doubt the sufficiency of the post to your reasonable

Chap. VI expectations, and on public grounds I think I should more regret your falling into it than I should any other political event just now anticipatable; for, apart from the general confidence in your character and aims, I feel that your presence in this present coalition is more of a guarantee against its becoming what I don't want it to be than any other circumstance I know of. However, things must be as they must, and of late I have seen a great deal go as I would not have it. This may be a bit more of the same sort of thing. You will give me no common pleasure if you tell me you have decided to hold on, and you will carry with you the warmest good wishes of many men should your answer be the other way.'

Mr. Mowat, however, decided to accept the Judgeship, and this ended the first chapter in his parliamentary career.

On November 14, 1864, he was appointed Vice-Chancellor of Upper Canada, an office which he held until October 25, 1872. During his seven years in Parliament he had established himself as a political force. He came into the House as Mr. Brown's first lieutenant and took from the beginning of his political life a foremost place, avoiding the narrowness and acrimony which too often impaired the influence and usefulness of his chief. During these seven years he had made many friends and few, if any, enemies; and when he left political life—as it seemed forever—it was with good wishes from both sides of the House and with many regrets from the Reformers.

HON. OLIVER MOWAT, Q.C., LL.D.

Vice-Chancellor of Upper Canada

The *Globe* of Nov. 15, 1864, said of him :— 1864

'As a parliamentary orator Mr. Mowat has always held a high place. The excellent legal training of his mind made him a close and correct reasoner. The qualities which made him eminent as a lawyer made him also an effective political speaker. When discussing any important question he had the faculty of seizing the essential points and the ability to select those best calculated to tell. Industrious enough to have facts and arguments wherewith to sustain them, he had also the invaluable advantage of knowing how to say precisely what he meant. Probably no man in Parliament excelled him in this faculty of getting just the words which his ideas demanded, in place of others which might satisfy a careless declaimer as meaning pretty nearly the same thing. There are other men in Parliament who, by virtue of a more thorough knowledge of particular questions, a more rhetorical style of speaking, or a more forcible delivery, may be entitled to rank before Mr. Mowat as public debaters : but they certainly have not numbered half a dozen at any time since he has been in Parliament; while there is scarcely one of them who could command greater attention from the House.'

The *Canada Law Journal*, edited by Mr. W. D. Ardagh (afterwards M.P.P. for South Simcoe) and Mr. Robert A. (afterwards Chief Justice) Harrison, said of Mr. Mowat's appointment :—

'When the death of the late lamented Vice-Chancellor Esten became known there was some

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speculation as to his probable successor. Everybody agreed that the most likely man was the gentleman upon whom the appointment has now devolved. Some supposed that he would decline, and were by no means agreed as to the best man for the appointment in the event of his refusal. Fortunately, his acceptance of the office has both relieved the Government from embarrassment and secured for the office one whose legal attainments and whose position at the Chancery Bar make him eminently the right man in the right place. . . . Mr. Mowat, as a politician, commanded the respect of both parties. His judgement was accurate; his honesty was beyond reproach; and his powers of debate were good. From the first he took his place in the first rank in the House of Assembly beside the Honourable George Brown, and to the last he maintained that position. . . . We have no doubt that he will be found equal to the fondest expectations of his many well-wishers both at the Bar and among the profession.'

Another leading journal said :—

'Mr. Mowat's high character, his eminence as a lawyer, his clear and well-trained reasoning faculties, and his possession of the confidence of all classes in the community, render him a most fitting successor to the late Vice-Chancellor Esten. This is some compensation for the loss of his services to the country in Parliament. The change, which takes one of our best statesmen out of the arena of politics, gives us un-

questionably the best man we could have to fill the vacancy in one of our higher Courts. Feeling the great importance of having an able and upright judiciary, we must not allow our regret at losing the statesman to spoil our satisfaction on securing the Judge. As Mr. Mowat, after playing a leading part during a very stormy period, leaves Parliament without a single stain upon his reputation, so he ascends the Bench without a single word of cavil, even from those who have been his strongest political opponents; and those who in times of party warfare most ungenerously and unjustly assailed him, now join in the general chorus of approval of his appointment.' 1864-72

Nor did the new Vice-Chancellor fail to realize the expectations of his friends and to maintain the high traditions of the judicial office. He brought to it the same power of concentration, the same zeal for work, and the same comprehensive grasp of the salient points of a case which he had already exhibited as a member of Parliament and as a Cabinet Minister. On the Bench he was one of the most urbane and patient of Judges, listening to the youngest stuff-gownsman with the same kindly attention as to the oldest Queen's Counsel, and always maintaining that equable mind and that gracious 'courtliness' of manner, which—though too often limited to the immediate *entourage* of kings—one has a right to expect from all those who administer justice in the name and stead of the Sovereign.

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His reported judgements—and only those of general interest appear in the Reports—may be found in Volumes 11 to 19 of the *Upper Canada Chancery Reports*, edited by the late Alexander Grant, Esq. They touch upon many, if not most, of the subjects that come within the cognizance of an Equity Judge : fraud in its protean forms, the law of trusts, of trade-marks, of copyright, of vendors and purchasers and of mortgages, the construction of wills, municipal law, school law, bankruptcy law, etc., etc. All these branches of jurisprudence are dealt with in the more than five hundred written judgments included in these Reports, many of which are still cited as leading authorities on the subjects to which they respectively relate. Though lacking perhaps in that literary finish which characterizes the written opinions of some Judges more classically trained than he, they have nevertheless a style and individuality peculiarly their own. Their leading characteristics are terseness and lucidity. Not a word is wasted, and the word used is always the right one, the best that could be chosen to express the exact shade of meaning intended to be conveyed. Nearly every judgement is prefaced by a short summary of the leading facts brought out in the evidence; and these summaries—bearing, as they do, evidences of thoughtful and laborious preparation — illustrate the thoroughness with which the Vice-Chancellor mastered all the facts of a case before delivering his judgement. After the summary of facts follows the judicial deter-

mination upon their legal results, tested by the touch-stone of well-established principles of equity. There are no long and bewildering citations of cases from Kansas and Oregon and Texas, or such extracts from judicial opinions as have padded but not strengthened the opinions of some of our Judges. No point made by counsel is overlooked, but is dealt with in the fewest and best chosen words. Precedents, though carefully considered, are not slavishly followed; and the Vice-Chancellor was never afraid to strike out a new line and to apply well-established doctrines of equity to new combinations of circumstances. 1864-72

When Mr. Mowat left the Bench in 1872 to resume political life, *The Barrister*, a legal periodical of the day, edited by men of political opinions adverse to those of his party, was able to say: 'His appointment as Vice-Chancellor was grateful both to the public and to the Bar. As a Judge his noticeable characteristic has been fair-mindedness. His reported decisions are clear and logical, and have always been held to be of high authority in our Courts. He was an ideal Equity Judge—learned in jurisprudence, skilled in technique, familiar with precedents, but withal master of his reason.'

The life of a Judge, especially that of a Chancery Judge, is usually uneventful, perhaps even monotonous; and the eight years of Mr. Mowat's Vice-Chancellorship formed no exception to the rule. During these years he entertained but little.

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Residence in the country had been prescribed for Mrs. Mowat, and for more than three years they had no house in town. During the greater part of 1866 they lived at York Mills, eight miles north of Toronto, in a house built by the late Col. Cameron and known as 'Lyndally.' Afterwards for two years they lived at 'Ardenvohr,' now the residence of Dyce W. Saunders, Esq., on Avenue Road, near the present site of Upper Canada College, but then quite in the country and surrounded by trees and fields. Afterwards Mrs. Mowat spent two winters in Florida and one whole year in Italy. During much of this period, also, the family were in mourning. Mrs. Mowat's mother (Mrs. John Ewart) died in the spring of 1867, and Mr. Mowat's brother George in April, 1871. Mr. George Mowat had been all his life a resident of Kingston, and the following resolutions adopted at a meeting of the Bar of that city show the estimation in which he was held:—

'Moved by Mr. James O'Reilly, Q.C., seconded by Mr. James Agnew, and resolved,—

"That the members of the Kingston Bar desire to record their sense of the loss they have sustained by the lamented death of George L. Mowat, Esquire, who, during a professional career of over sixteen years, has deservedly enjoyed the respect and esteem of the profession and the general public as a sound lawyer, an honourable and high-minded gentleman and a man of sterling integrity." '

'Moved by Dr. Henderson, Master in Chancery, seconded by George A. Kirkpatrick, Esq., M.P., and resolved,— 1864-72

' "That the members of the Kingston Bar do attend the funeral in their robes on Saturday next and wear crape on the left arm for a month as a token of respect and affection for the deceased." '

Meantime Mr. Mowat's interest in educational, philanthropic and religious work continued unabated. As a member of the Senate of Toronto University he took an active part in its proceedings; he was President of the Canadian Institute from 1864 till 1866, and when the Evangelical Alliance was formed (about 1867) he became its first President and held that office for more than twenty years.

Very few letters of this period have been preserved; but I may quote two that were written to a lady who asked his aid to secure the insertion in the *Globe* of a letter in defence of one of her friends, who had incurred the vigorous condemnation of that paper by some articles advocating the annexation of Canada to the United States. Mr. Mowat's opinions on this subject were evidently as strong in 1866 as when, twenty-seven years afterwards, he dismissed a County Attorney for the public expression of annexation sentiments.

'Dec. 13, 1866.

'My dear ——,—

'I had not time to call on Mr. Brown with your letter, but I sent it to him as the letter of a friend

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whom I greatly esteemed and would be glad to oblige. I did not give your name, as you had not authorized me to do so. I see this morning, however, that there is an editorial in the *Globe* on the letter, although the letter itself is not published.

'While I did my best to comply with your wish, I must say that I did not think the tone of your letter—a very clever letter though it certainly was—the proper one for the occasion. You are a warm friend of Mr. ——, but he is attacking that British connexion which is so dear to us, and is doing what he can to withdraw us from it. He should be treated fairly, as *e.g.*, Protestants should treat an erring and dangerous, though honest, Roman Catholic controversialist. Yet no Protestant, who was not a warm personal friend of the man, could feel so indignant at some injustice in a reply to the R.C. as he would at the evil which the latter was doing. Now, loyalist as you are, you, for the moment, seemed a thousand times as angry at the loyal *Globe*, whose loyalty you thought made it unjust to the enemy, as you were at the disloyalty which Mr. ——'s articles were calculated to create, and which the *Globe* was endeavouring to counteract. Or rather, I should in candour say, your wrath was *wholly* against the loyalist.

'Is this a sermon ? Am I too loyal to be entirely just in my criticism of the letter of a friend for whom I have a warm regard, and she a lady ? Is it unnatural, then, that a stranger to Mr. ——

should be unjust (in your opinion) in his criticisms on the letters of one whose purpose is, honestly perhaps, to transfer our connexion with beloved Britain to hated Yankeedom?' 1866

'Dec. 26, 1866.

'I did not misunderstand the drift or intention of your letter to the *Globe*. I am afraid my letter must have been in some one of its sentences very clumsily expressed, else you could not have so mistaken me. Perhaps you have read a remark respecting Mr. —— and his productions as referring to you and your letter.

'By the by, you have fallen into another error anent the terrible *Globe*. That journal has always been loyal, whatever else it may have been. Its first editor, Peter Brown, was the author of a book, *The Fame and Glory of England*, which created a sensation at the time it appeared (anonymously), and was ascribed to several leading English politicians who had visited the United States. It was written before the family removed from New York to Canada; and the course of the *Globe* has been ever since what might have been expected from the tone and spirit of that book, which was intensely British and loyal.'

CHAPTER VII

PREMIER OF ONTARIO

WHEN Mr. Mowat, after having taken part in the great Conference which settled the basis of Confederation, retired from political life to the comparative seclusion of the Bench, it seemed to him and to his friends that he had bidden adieu to politics forever. He had served his country and his party with zeal, ability and honour for nearly seven years during a most important and critical period in the history of Canada, and henceforth his name was to be written in her *libro d'oro* as one of the 'Fathers of Confederation.' 1872

Shortly after his appointment to the Bench he purchased a residence on Simcoe Street, a few doors above Queen Street and within five minutes' walk of Osgoode Hall, and there, surrounded by his books, he spent many of the happiest hours of his life. All his surroundings were congenial. The Chancellor of his Court, the Hon. Philip VanKoughnet, had been for some years his professional partner and was an intimate and valued friend, as was also the senior Vice-Chancellor, the Hon. John Godfrey Spragge. As a Judge he was entirely independent of the changes and chances of political life, assured of a sufficient income, and entitled after a few years more of service

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on the Bench to honourable retirement and a competent pension.

Meantime, however, events were taking place in the political world which even a Judge could not contemplate without interest, and a patriot without anxiety. The majority of the people of Upper Canada had welcomed the Act of Confederation as removing a long and deeply-felt injustice, and as securing to them, after a protracted, and, at times, an apparently hopeless struggle, the control of their own local affairs. Ever since 1855, Upper Canada had been governed, not according to the will of the majority of its own people, or even of its own representatives, but by the combination of an Upper Canadian minority with a solid phalanx of Lower Canadian members led by Sir George Cartier. The Liberal party adopted the plan of Confederation—and wrung a reluctant assent to it from Sir John Macdonald and his followers—not altogether as an end but as a means toward the realization of that provincial autonomy for which they had fought so earnestly and so long. One can, therefore, understand with what anxiety they regarded its success and how fixed was their determination that it should secure to them the right of self-government.

Yet the same astute politician, who had ruled Upper Canada by the aid of a Lower Canadian majority, was still bent upon preserving his control over the provincial legislatures and rendering them so far as possible subordinate to the central government in which his was the controlling

mind.[1] Sir John Macdonald had always preferred a 1872
legislative to a federal Union,[2] since the former would have enabled him more easily to control the administration of affairs. Even after the new Constitution had been adopted he carried out the same line of policy and chose as the first Premier of Ontario Mr. John Sandfield Macdonald, who, like himself, had been a determined opponent of the federal system, and who, under his advice and direction, and contrary to the strongly expressed opinion of the Liberal party, began by selecting as his colleagues two of the most thorough Conservatives in the province, Mr. Matthew Crooks Cameron and Mr. John Carling, and only one, Mr. E. B. Wood, who could be definitely classified as a Reformer.

In the first election after Confederation the two Premiers adopted the same platform and, in the phrase of the day, 'hunted in couples.'[3]

Moreover, many of the methods by which the Ontario Premier carried on his Government were in direct opposition to the principles of the Liberal party. He unblushingly declared that the distribution of patronage and the location of provincial public buildings would be regarded as

[1] See Appendix IV.

[2] Pope, *Sir John A. Macdonald*, *i.* 275, and see Appendix IV.

[3] Mr. Pope frankly admits that the Ontario Premier was regarded by Sir John Macdonald merely as his henchman, and complains (Vol. II, p. 20) of his 'intractability.' He mentions also that, in order to exercise a more personal supervision over provincial affairs, Sir John at one time seriously thought of entering the Local House as member for Frontenac. (See his letter of Sept., 1868, to Sir Alexander Campbell, quoted in footnote to p. 20 of Vol. II. 'I have some idea of running for Frontenac myself. I want a check on the powers that be at Toronto.')

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rewards for political support. When it was pointed out that several members of the House held offices which necessarily affected their independence, he declined to make any change, and called upon his followers to vote down a measure introduced by the Opposition for the purpose of securing the greater independence of the Legislature. When Mr. Blake, in 1869, moved a series of thirteen resolutions, condemning the action of the Dominion Government in granting 'better terms' to Nova Scotia, Mr. Macdonald and his followers regarded it as an attack upon the Government at Ottawa, and moved the 'six months' hoist' to each of the resolutions, but, having been defeated on the thirteenth and principal resolution, they accepted the amendment for the purpose of retaining office.

But Mr. Macdonald's most serious departure from Liberal principles was when he induced the House to place at the disposal of the Government a sum of $1,500,000, for the purpose of aid to railways, and voted down a resolution moved by Mr. Blake, declaring that every Order-in-Council granting railway aid should be subject to ratification by the Legislative Assembly. It was this determination to substitute executive for parliamentary control which formed the chief issue in the provincial elections of 1871; and the opinion of the Liberals of the province was thus voiced in the election address of the Hon. Alexander Mackenzie to the electors of West Middlesex :—

'The present Government of Ontario has been from the first the mere creature of the Dominion

Government, existing by its sufferance and subject to its control. Formed on the same pretended "no party" principle as the Ottawa Government, it has established its right to be classed with it in its status of political morality. The Government openly avows its intention to locate public buildings and public works where it receives the greatest amount of parliamentary support. Such practices and such avowals are, however, the natural result of a coalition of men holding different political opinions and having no common object in view but the retention of office. In my opinion no more shameless admission could be made by any Government, and this alone should secure its condemnation by the electors of the country.' 1872

The elections were held on March 14, 1871, and the verdict of the country was hostile to the Sandfield Macdonald Government. The House was summoned to meet on December 7, at a time when several seats had been vacated by successful protests, and when the Government could not count upon a working majority. This was contrary to the advice of Sir John A. Macdonald, who wrote to a friend : 'I hope nothing will happen to Sandfield or his Government. I am vain enough to think that if I were in his place just now and had his cards, I could carry him through the first three weeks of the Session (wherein alone there is any danger) triumphantly. I am not so sure that he will be able to manage it himself.'

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Sir John's forebodings were realized. An amendment to the address was moved by Mr. Blake, regretting the action taken by the Legislative Assembly during the previous Session in reference to the large powers given to the Executive as to the Railway Aid Fund, and declaring that every proposal to grant aid to a railway should be submitted for the approval of the Assembly, which was carried by 40 to 33. Mr. Alexander Mackenzie then made a direct motion of want of confidence, which was carried by 37 to 36, whereupon the Government resigned.

Mr. Blake was called upon to form the first Liberal Ministry of Ontario. He chose as his colleagues Mr. Adam Crooks as Attorney-General, Mr. Alexander Mackenzie as Provincial Treasurer, Mr. R. W. Scott as Commissioner of Crown Lands, Mr. Archibald McKellar as Commissioner of Agriculture and Public Works, and Mr. Peter Gow as Provincial Secretary; and the new Administration was sworn into office on December 14, 1871.

Up to this time Mr. Blake and Mr. Mackenzie, as well as several other members of the Legislative Assembly of Ontario, held seats also in the Dominion Parliament; but during the Session of 1872 an Act forbidding dual representation was passed by the latter body, and Mr. Blake and Mr. Mackenzie were thereby compelled to elect between Ottawa and Toronto. The situation in both Houses was a critical one. At the general elections of 1872, Sir John Macdonald's majority,

which had been 68 in the preceding Parliament, was reduced to 6; and there were not wanting indications that the Liberal party, under proper leadership, might reasonably expect to secure control of the House within a very short time. On the other hand, if the Liberal Administration in Ontario, which had defeated Mr. Sandfield Macdonald by only a single vote, and had been less than a year in office, were suddenly to lose the services and the influence of its two most able members, its hold upon the House would be greatly weakened and its continuance in office seriously threatened. 1872

Upon the death of Mr. John Sandfield Macdonald in June, 1872, the leadership of the Conservative party in Ontario devolved upon the Hon. M. C. Cameron, a Tory of Tories and the devoted friend and admirer of Sir John Macdonald. If Mr. Cameron became Premier the Ontario Administration would be a mere echo of the will of the chieftain at Ottawa; and provincial autonomy would be even more seriously menaced than under the rule of Mr. Sandfield Macdonald. This was the situation when, on the morning of October 21, 1872, Mr. Blake and Mr. Geo. Brown had an interview with Mr. Mowat in his library on Simcoe Street, and urged him to leave the Bench and re-enter political life as leader of the Ontario Government. The suggestion was entirely unexpected, and Mr. Mowat's first impulse was unhesitatingly to refuse. He was asked to abandon a position of independence, ease and

Chap. VII comparative affluence for one of arduous and incessant toil, precarious remuneration and inevitable obloquy; to leave the safe haven where he had hoped to spend the remainder of his life, and embark once more on the stormy and turbulent sea of politics, where the turn of the tide might leave him in a moment the unremunerated leader of a hopeless Opposition. But Mr. Blake, Mr. Brown, and, later in the day, Mr. Mowat's old and valued friend, Mr. Mackenzie, placed before him very strongly the arguments which I have endeavoured to suggest in the preceding pages. They urged that the future of Ontario was at stake; that if the province was to be governed from Ottawa, as it had been formerly from Quebec, the chief object of Confederation would be thwarted, and provincial autonomy would become a delusion and a sham. To his argument that he had been for eight years entirely out of political life, and that he doubted his ability to lead successfully a Legislature with many of whose members he was entirely unacquainted, they replied by averring it to be the desire of all prominent Liberals that he should return to public life; and they assured him of the confidence and support of every member of the party.

Mr. Mowat hesitated and finally asked time for consideration. The question before him was a momentous one for both himself and his family, and his decision must affect the whole course of his future life. He spent the next two days in anxious thought, and in consultation with his

family and most of his intimate friends. 1872
Doubtless, too, he was not without ambition, and felt that he might serve the country better and win more honour as a political leader than as a Judge.

On October 23 Mr. Blake again called upon him and, receiving an affirmative answer, at once placed his own resignation and Mr. Mackenzie's in the hands of the Lieutenant-Governor, the Hon. William P. Howland, and advised that Mr. Mowat should be called upon to form a new Government. Reluctantly and with diffidence he undertook and accomplished the task, and the new Cabinet was at once sworn in as follows: —

Hon. Oliver Mowat, Q.C., LL.D., Attorney-General[1] and Premier.

Hon. Adam Crooks, Q.C., LL.D., Provincial Treasurer.[2]

Hon. Archibald McKellar, Commissioner of Agriculture and Public Works.

Hon. R. W. Scott, Q.C., Commissioner of Crown Lands.

Hon. T. B. Pardee, Provincial Secretary and Registrar.[3]

No difficulty was experienced in finding a seat for the new Premier. Several members of the House offered to retire in his favour. He chose as his constituency the North Riding of Oxford, a stronghold of Liberalism, which had elected to the Parliament of pre-Confederation Canada

[1 *Vice* Hon. Adam Crooks. 2 *Vice* Hon. Alex. Mackenzie. 3 *Vice* Hon. Peter Gow.]

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the Hon. George Brown, the Hon. William McDougall and Mr. Hope Mackenzie, and had been represented since 1867 in the Legislature of Ontario by Mr. George Perry, who now resigned in favour of the new Premier.

On Nov. 21, 1872, Mr. Mowat issued his election address:—

'To the Free and Independent Electors of the North Riding of Oxford.

'Gentlemen:—

'Having accepted the office of Attorney-General for Ontario it is necessary for me to have a seat in the Legislature; and the generous conduct of Mr. Perry having created a vacancy in the representation of your Riding, for which I have been invited to become a candidate, I beg to offer myself for your suffrages.

'Many of you will remember that I entered public life in 1857 as a Reformer. I thought then that Reformers were right in their views on the principal matters which agitated the country and that on future issues I was more likely to find myself in accord with the Liberal party than with those to whom it was opposed; and for the seven years that I was a member of the Canadian Parliament I had the happiness of enjoying the uninterrupted confidence of my fellow-Reformers in Parliament and in the country.

'For the eight years which followed, though I had no expectation of ever returning to political

life, yet I continued to take that interest in public affairs which every intelligent citizen ought to take—and which I hope that most intelligent citizens do take, whatever their position may be—and during that period I perceived nothing which should transfer my sympathies from the Liberal party to its opponents. When, therefore, I was called by His Excellency [*sic*] to form an Administration I chose to form one which should be recognized and accepted as a thoroughly Reform Administration; and it is gratifying to know that the Government as now constituted has the full approbation of the whole Reform party, as well as of many Conservatives. 1872

'I shall do my best to justify the public confidence which has been manifested towards myself and the gentlemen associated with me. With that view it will be my endeavour in the Government and the Legislature to do equal justice to all classes, creeds, parties and persons. That I understand to be a cardinal doctrine of Reform policy.

'With the same view I hope soon to mature, with the aid of my colleagues, and to carry, at an early date, measures for the satisfactory settlement of the Municipal Loan Fund debts; for the just appropriation of the surplus revenues of the province; for obtaining an augmented immigration, principally of agricultural labourers and domestic servants; for the more rapid developement of the agricultural and other resources of our country; for the reform of the laws in regard

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to various matters in which experience has brought to light defects and injurious anomalies; and for securing increased efficiency in the working of our educational and municipal institutions, in the administration of justice, and in other departments of the public service.

'My acceptance of a seat in the Cabinet has been alleged by some political opponents to be contrary to British constitutional rules in regard to the judiciary; but that statement is without the slightest foundation. No such rule can be found, except in the fancy of those who are asserting it as a weapon of assault against myself. On the contrary, the well-settled British rule is that Her Majesty has a right to call to her Council any of her subjects, whether he happens to hold a judicial or any other office. If he holds an office which, by law, custom or otherwise, he cannot hold in conjunction with a seat in the Cabinet, the only effect is that the office must be surrendered, as I have surrendered my seat in the Chancery Bench. The Lord Chancellor is always a member of the British Cabinet, and there are nearly always several Judges in the British Parliament.

'No office in Ontario is more honourable than that of Premier, to which I have been called; and the office presents a greater field for public usefulness than that which I have left. I did not seek or desire the position, and on personal grounds I was reluctant to accept it; but I could discover no sufficient reason to justify me in

refusing it. If you approve of the views and opinions which I have communicated in this address, and if you believe that I will endeavour to carry out what I have professed, I hope that you will enable me to have the honour of doing so as member for the North Riding of Oxford.' 1872

'Here,' said an independent writer, 'we have the ring of true metal, the outspoken language of a man who appreciates the requirements of the country and frankly announces his determination to grapple with them. That no member of the House and no elector may be unprepared for the legislation proposed, he gives due warning in advance of the state paper which is always looked forward to for such information. He has nothing to conceal; no honest man has. The Vice-Regal Address at the opening of the House next month can scarcely give more definite information as to the questions upon which the Legislature will be asked to pass judgement.'

The nomination was held at Woodstock on November 29, 1872. Mr. Mowat was elected by acclamation, and continued to sit in the Ontario Legislature as member for North Oxford until July, 1896, when he was appointed a member of the Senate and Minister of Justice for Canada.

The story of Mr. Mowat's life for the next twenty-five years (1872-1897) is one of 'ceaseless toil and endeavour.' 'His life,' if I may be permitted to apply to him the words of Lord Aberdeen[1] concerning another great Canadian, 'was full of

[1] Preface to Mr. J. Castell Hopkins's *Life of Sir John Thompson*.

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work,[1] and of work to which might be emphatically applied the old maxim "*laborare est orare*"; for the labours of his busy life were pervaded and prompted by lofty aims and religious principles.' Chief among these aims was the establishing of the rightful position of Ontario under the new constitution, the developement of its material resources and the promotion of its educational and moral welfare. True, these were also the ideals of other men belonging to both our political parties, but in no case except that of Sir Oliver Mowat were they the single and absorbing object of a lifetime. As the *Montreal Star* (a not too friendly critic of Liberal politicians) observed in 1902 : 'For the last thirty years Ontario has continued to hold the first place among the provinces of the Dominion. The whole credit for its progress cannot be given to any one man, but Sir Oliver Mowat's has been the master-mind at the head of affairs, and to him, more than to any one else, is due the present position and prosperity of the sister province.'

To attain this object he was content to 'scorn delights and live laborious days'; and it is not only or even chiefly as one of the 'Fathers of Confederation,' as Vice-Chancellor of Upper Canada, or as Lieutenant-Governor of his native province that he will hereafter be chiefly remembered,

[1] On January 1, 1873, he resumed the practice of his profession, rejoining his former partner, Mr. James (now Mr. Justice) Maclennan, who was then the head of the firm of Maclennan, Downey & Ewart. Notwithstanding several subsequent changes in its membership, Mr. Mowat's name continued to appear in the style of the firm as senior partner from that time until his death.

but as the man who more than any one else had the making of Ontario during the formative years of its history under the new Constitution. 1872

As Dr. George Parkin truly says, in a passage which I have placed on the title-page of this volume: 'The work done may or may not be on a grand scale; but it is foundation work, the significance of which grows with the lapse of time.'

But the life of a provincial politician—even that of a provincial Premier—is not of the sort which lends itself readily to picturesque biography. The perusal of Acts of Parliament and Governors' speeches, of minutes, dispatches, election and other public addresses and of parliamentary debates has never been regarded by the general reader as a fascinating occupation; yet it was in the preparation of such documents as these and in the discussion of those problems of political science and national economics, which from time to time presented themselves to the people of Ontario and Canada, that Mr. Mowat devoted the best years of his life. In these, too, is recorded the real biography of the man, at least so far as the public is concerned with it; for I am not of those who think that biography consists in mere description of a man's outward characteristics or of his personal habits and predilections. It is not with Sir Oliver Mowat in his home, or in his church, or in his lighter moments of social intercourse, that this sketch will chiefly have to do; but with Sir Oliver as the statesman who so long and so powerfully influenced the course of public events in the

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Province of Ontario, the relations of that province to the Dominion and the neighbouring Republic, and, at a critical period in our colonial history, the attitude of Canada toward the mother-country.

The Fates were in many ways propitious to Mr. Mowat. He assumed the premiership of his native province when he was in the full vigour of manhood; and he brought to it an experience, legal, political and judicial, such as had fallen to the lot of few men of his age. He came, too, not as a member of a hopeless Opposition but as the chosen leader of a victorious and triumphant party. Nor had he to construct his Cabinet entirely out of new material. He came into an existing and popular Administration, numbering among its members such 'old parliamentary hands' as the Hon. R. W. Scott, the Hon. Archibald McKellar and the Hon. Adam Crooks. The first two of these had, like himself, been members of the Legislative Assembly of pre-Confederation Canada, were familiar with the usages of the House and already possessed its confidence and that of the country. Mr. Crooks had been a member of the Blake-Mackenzie Administration, and his great abilities were already well known. Indeed, the new Premier seemed to have attained at one step what it is said that Lord Rosebery always desired,—'the palm without the dust.'

His return to political life was hailed with acclamation by the Liberal party throughout the province; and a large section of the Conservative press referred to his appointment in kind and

not unflattering terms. The *London Free Press*, 1872
a strongly Conservative paper, said : 'Mr. Mowat will no doubt prove acceptable to all parties. He stands very high as a Christian gentleman, and is moderate in his political views. We are glad, indeed, to see such men at the head of affairs in this province, and we feel certain that his appointment will be welcomed by all moderate men as the best that could at present be made.' And The *Kingston News* : 'The return of the Hon. Mr. Mowat to political life is a somewhat unusual course for one holding the high office which he has adorned for the past eight years, no less by his ability than by the learning and keen judgement which he has always brought to bear upon the cases submitted to him. His accession to office is a distinct gain to the province.' And even the *Toronto Leader*, which, until the recent birth of the *Mail*, had been the recognized organ of the Conservative party, had nothing worse than this to say of the new Premier : 'Had the Hon. Oliver Mowat been asked by Sir John A. Macdonald to accept a position in the Ministry of the Dominion, people would not consider the event of such moment, but to resign a seat on the Bench for that of "President of the Council" [*sic*] is certainly a surprise. Of course there is nothing wrong in the act itself, but it would lead us to infer that the Bench is not the enviable place which so many are accustomed to think it. The turmoil and worry of political life must have a peculiar charm for some temperaments, and so long as

Chap. VII honourable and honest men are disposed to engage in our politics it is a promising and hopeful sign.'

But there were other and less courteous comments. The recently established *Mail*, in particular, attacked Mr. Mowat for his 'descent' from the position of Vice-Chancellor to that of Premier of Ontario in language which can only be described as ferocious. It is amusing now to read these utterances, born in the heat of a party zeal, untempered by knowledge or discretion, especially when one remembers that the editorial pages of this very newspaper exhausted the vocabulary of panegyric a few years later in eulogizing the patriotism which induced the Hon. John S. D. Thompson to leave his seat on the Bench of the Supreme Court of Nova Scotia in order to become Minister of Justice and Attorney-General of Canada. As Mr. J. Castell Hopkins truly says in his admirable *Life of Sir John Thompson* : 'It is not probable that an occasional retirement from the Bench to enter political life will ever really injure the judiciary. . . . Who, indeed, could be better fitted to administer justice for the nation, to control the law work of the Dominion, to look after and abolish, modify, change and amend its laws, than one who had previously had a judicial experience.'

On the evening of January 8, 1873, a great Liberal banquet was held in Toronto, at which speeches were made by Senators Simpson and Leonard, the Hon. Edward Blake, the Hon. Alexander Mackenzie, the Hon. Archibald Mc-

Kellar, Mr. James Young (Galt), and other leading Reformers. Mr. Mowat's speech in reply to the toast of 'The Provincial Government of Ontario' merits quotation, as showing that from the first he set before himself those ideas of political morality which, throughout all his public career, he strove, and not unsuccessfully, to maintain. He said :— 1872

'The party now in power in Ottawa, and in opposition in Toronto, calls itself the Tory party ; but I deny to it the applicability of the term of either Tory or Reformer. It possesses the virtues of neither the one nor the other; and, in consequence, not a few honest Tories all over the country are joining the Reformers. I believe that I am to have the support of gentlemen in the House who formerly belonged to the Tory party.[1] They do not consider that the party now in opposition here and in power at Ottawa at all represents the Tory party. Long ago—within my time, but not within yours—Conservatives had distinct and well-known principles. Many years ago the Tories had for their chief a Judge (Sir John Beverley Robinson) who exerted a high influence and inspired the party with sentiments with which it is not actuated to-day. I will read to you a portion of a letter written by the late Sir John Beverley Robinson to a young man shortly after his entrance into Parliament. They are good sound Reform principles, and are thus stated by him :—

[1] See Appendix V.

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'"I would lament more than I can tell you if in your eagerness to carry any point, however good, or to oppose anything, however bad, you should be tempted to take any step which the most high-minded man could not vindicate. Make it your rule of conduct to do nothing that you would not care to have proclaimed in the market-place, and to write nothing which you would be ashamed to see in the *Pilot*." The *Pilot* was the paper which then represented the Reform movement, and which doubtless occupied a similar position to that of the *Globe* at the present time. The letter continues: "Let all be honest, fair and above-board—kindliness and fair dealing to all, unworthy concessions to none. Always take such a course that if all you do and say were to be made public, you would not care a farthing. It is the only safe course, as well as the only right course."

'Now these are practically the principles which support us now. They are the principles of the Reform party; they are the principles of those to whom I speak to-night. I would not represent the Reform party at all unless I felt confident that I could carry out these principles in the performance of my political work.'

And these were not idle words. Mr. Mowat spoke —as he always spoke—*ex animo;* and a quarter of a century of public service, spent under the fierce search-light of a not too scrupulous Opposition, proved the absolute sincerity of this, his first utterance as Prime Minister of the Province of Ontario.

CHAPTER VIII

THE SESSION OF 1873

THE first Session of the Legislature under Mr. Mowat's premiership began on Jan. 8, 1873, when the Lieutenant-Governor, the Hon. W. P. Howland, C.B., delivered the Speech from the Throne. It may not be uninteresting here to quote, at least in part, the first official utterances which the new Premier put into the mouth of Her Majesty's representative : 1873

'We have now,' said His Honour, 'had six years' experience of the working of the great measure of Confederation, which the people of Upper Canada frankly accepted and from which they anticipated much advantage. I am confident that you will agree with me that their expectations have in a large measure been realized, though in some of its details the Act of Union may have done less than justice to this province, and incidents to be regretted have occurred, as they will occur in the first establishment of all new constitutions. The general effect on the local affairs of Ontario has been eminently beneficial. The administration of these affairs is now to a large extent in our own hands; and our revenue has enabled us, without taxation, not only to defray all the charges of provincial government and to afford essential aid to numerous

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railway enterprises and other public works and improvements, but also to accumulate a surplus now amounting to more than four millions of dollars. I hope that the existence of this surplus will enable you to place on a satisfactory footing the debts owing to the Municipal Loan Fund, and I earnestly recommend to your attention such measures for this purpose as may be laid before you.'

Additional aid was promised toward the construction of railways, the drainage of swamp and wet lands, and the promotion of an increased immigration of agricultural labourers and domestic servants. Measures were to be introduced for the improvement of the educational system, for increasing the efficiency of the Council of Public Instruction and for popularizing the Provincial University by giving to its graduates a direct voice in its management. The legislation of the Session was also to include bills respecting the management of the asylum for the deaf and dumb, and the asylum for the blind, for establishing a hospital for inebriates and providing additional asylum accommodation for idiot and imbecile children. His Honour went on to say :

'There will likewise be submitted for your attention measures for promoting the better administration of justice in the Courts of the province; for giving increased efficiency to the law for the trial of controverted elections, and for consolidating and amending the laws relative to our municipal institutions.'

Reference was made to the pending negotiations between the Dominion and the province on the subject of the north-westerly boundaries of Ontario, and it was stated that investigations necessary to the establishment of the rights of Ontario were being vigorously prosecuted, and that a mass of evidence in favour of the boundaries claimed by the province had already been accumulated. 1873

Reading this speech in the light of subsequent events, it is easy to see how clearly it foreshadows the policy which was then developed and developing in the mind of the Premier. The reference to the power of disallowance, which had been exercised so frequently by the Dominion Government during the administration of Mr. Sandfield Macdonald, is significant. Mr. Mowat had determined that the constitutional rights of the province in this respect should be emphatically asserted and strongly maintained; and the legislation of the Session was in accordance with this decision. Evidently also the question of establishing the northerly and westerly boundaries of Ontario had already begun to engage the attention of the Government, and they were preparing for a struggle, destined, although they could scarcely have foreseen it, to continue almost without intermission for the next fifteen years.

The intention of the new Administration to encourage and foster the developement of the resources of the province by the construction of railways, the drainage of lands, and the promotion

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of immigration are all clearly indicated in the speech. Law reform, statute consolidation, purity of elections, the improvement and popularization of our educational system, the aiding of municipalities in the burden of maintaining the sick, the insane, the destitute and the imbecile—all these were reforms which they had in contemplation; and all these, within a very short time, they were able to carry into effect.

After the delivery of the speech, and when the Lieutenant-Governor had retired and the House was cleared of strangers, Mr. Mowat, rising from the seat on the right hand of the Speaker, which he was thenceforward to occupy for nearly a quarter of a century, moved the first reading of a Bill, entitled 'An Act to authorize the administration of oaths to persons appointed as Justices of the Peace,' a Bill which is introduced in the Imperial Parliament, and in the Legislature of every British colony of which I have any knowledge, on the first day of each Session, immediately after the reading of the Speech from the Throne, in order to indicate that, although the Crown has called the House together to deliberate upon the subjects mentioned in the speech, it is, nevertheless, the ancient and undoubted privilege of Parliament to discuss any other matter within its jurisdiction. On motion of the Attorney-General it was ordered as usual 'that the bill be read this day fortnight'; but although it has been introduced into British Legislatures some thousands of times since 1688, it has never yet received a second reading.

The day following began the real business of the Session, and the dingy, ill-lighted Chamber of the old Parliament buildings (now demolished) was filled by one of the most notable and representative assemblies which has ever met during the existence of the province. Shortly after three o'clock, the resonant voice of the usher at the western door cried, 'Room for Mr. Speaker,' and the Sergeant-at-Arms appeared, bearing on his shoulder that ponderous and unwieldy weapon of gilded wood which is called the mace. This, after a solemn pause, he deposited on a velvet cushion at the end of the long green table extending down the room from the 'foot of the Throne.' Immediately following him came a big man with blonde locks, slightly tinged with gray, a clean-shaven, distinctly Scottish face, heavy-jowled, but with humorous lines about the eyes and mouth. Clad in his silken robes, grave and reverend in aspect, Lieut.-Col. James George Currie, sometime member of the Legislative Council of the old Province of Canada, and now Speaker of the second Provincial Legislature of Ontario, took his seat in the gilded arm-chair on the red dais at the east end of the Chamber. At the head of the long table on which rested the mace sat a typical Irish gentleman, clad, like the Speaker, in silken robes and carrying in his mien the dignity of a hundred Irish earls—Lieut.-Colonel Charles Todd Gillmor, Clerk of the Legislative Assembly and Commanding Officer of the Queen's Own Rifles—'*In pace paratus*,' *Anglice*, 'spoiling for 1873

Chap. VIII a fight.' On the right of Col. Gillmor, one might see the shining poll of Arthur Henry Sydere, Assistant Clerk of the House, a man whose knowledge of parliamentary procedure is—since the death of Sir John Bourinot—probably unsurpassed by that of any other man in Canada. On the right of Mr. Speaker, in the first chair of the front row, sat the new Attorney-General, and next him a man with a broad, thoughtful brow, a silky beard and half-shut, peering eyes, a man with a face of a gentleman and a scholar, whose portraits of that date forcibly remind one of the early pictures of the present Duke of Devonshire. This was the Provincial Treasurer, the Hon. Adam Crooks, Q.C., LL.D., Vice-Chancellor of the University of Toronto; a man to whom this province owes a debt which she has not yet realized, and may never, perhaps, fully appreciate. Beyond Mr. Crooks, the beardless countenance and long loose limbs of the ever-popular Commissioner of Public Works, the Hon. Archibald McKellar; turning, perhaps, in his seat apparently regardless of the debate, to tell some racy Scottish story to his friend and crony, Mr. J. M. Williams, the member for Hamilton, but all the while alert to mark and quick to answer any criticism upon his Department. Behind the first row one saw the waving white hair, and carefully-parted beard. of the Commissioner of Crown Lands, the Hon. R. W. Scott, Q.C., who, thanks to Heaven and a vegetarian diet, is still in the flesh. Next him the keen, brown, nervous fea-

tures of the new Provincial Secretary, Mr. Timothy Blair Pardee, and beyond, the Dundreary whiskers and Vanderbiltian physiognomy of the Hon. E. B. Wood, Q.C., soon to be first Chief Justice of the new Province of Manitoba. Farther down the front row were Robert McKim,—afterwards famous as one of the leading spirits in unearthing the plot of 'the brawling brood of bribers'—James Bethune, Q.C., of Stormont; Thomas Hodgins, Q.C., of West Elgin, now Judge of the Admiralty Court and Master-in-Ordinary of the Supreme Court of Judicature; and H. M. Deroche, Q.C., of Addington, all lawyers of ability and eminence in their profession, whose contributions to the debates of the Assembly raised their level far beyond that of commonplace or platitude. 1873

On the opposite side of the House the seat which during the previous Session had been occupied by the late Hon. John Sandfield Macdonald was all too seldom filled by the leader of the Opposition, a man to whom Mr. Mowat accorded the title of 'an honourable gentleman and a conscientious lawyer.' The pallid face, the hair carelessly brushed back from the broad forehead, the keen flashing eyes and the little 'imperial' which so often terrified hostile witnesses, belonged to the Hon. (afterwards Sir) Matthew Crooks Cameron, Q.C., an incarnation of pure intellect and a master of destructive criticism: in the House almost alone, yet distinctly the leader of his party; in private life one of the most genial and lovable of men. Next, on his left, a fighting man with a

Chap. VIII square head and closely trimmed beard, reminding one of recent pictures of Sir Gilbert Parker. This is Herbert Stone Macdonald, Q.C., deputy leader of the Opposition and Grand Master of the Loyal Orange Association of Eastern Ontario. His colleague in the deputy leadership, Mr. Henry Merrick, also an Orangeman, looked (as he was) an energetic and prosperous manufacturer. Further down the front row on the Opposition side one could scarcely fail to see another great Orangeman, —great not only in influence but in physical and mental equipment—Mr. Thomas R. Ferguson, leader of the 'lambs' of South Simcoe. Next on his left Mr. W. D. Ardagh, Q.C., one of the editors and proprietors of the *Canada Law Journal*, who represented the North Riding of that staunchly Protestant constituency. Beyond the portly form of Mr. Ferguson one might possibly see the sharp, ferret-like face of 'the man with the scrap-book,' Mr. John Charles Rykert of Lincoln—dreaded by political foes and not much beloved even by political friends. Next him the tall figure of one of the 'nine martyrs,' Mr. Abram W. Lauder; classified by himself sometimes as a Reformer, sometimes as a Conservative, but always and altogether rancorous in language, a man of whom it might fairly be said in the words used by an English historian concerning a well-known politician, that he was 'a frequent speaker in Parliament, but absolutely without weight even in his own party.' Beyond Mr. Lauder appeared the bald head and jovial face of Mr. Albert Prince, Q.C.,

of Windsor, and the broad, florid English countenance and short gray beard of the Hon. Stephen Richards, Q.C., late Commissioner of Crown Lands, who had retired to a back bench on the Opposition side of the House. Near him[1] were three men, recent acquisitions to the Legislature, in which their names were soon to become well known: Christopher Finlay Fraser of South Grenville, William Ralph Meredith of London, and Rupert Mearse Wells, who had succeeded the Hon. Edward Blake as member for South Bruce. 1873

Other faces recall themselves to one's memory : Thomas M. Fairbairn, Q.C., of Peterborough; Frederick W. Cumberland, the astute and diplomatic general manager of the Northern Railway; Henry Corby of Belleville, father of the well-known and popular ex-M.P. for West Hastings; the cheerful face and bright blue eyes of Mr. S. C. Wood, soon to be called to a seat in the Cabinet; and the clear-cut, aristocratic features of one of Canada's best and bravest sons, Lieut.-Col. Arthur T. H. Williams, of Port Hope.

It was, indeed, a notable Assembly; one of which Ontario might well be proud, representing in fair proportion its agriculturists, its manufacturers, and its business and professional men, as well as that leisured class of which this province has never been wholly destitute.

[1] During nearly the whole of Mr. Mowat's premiership the Government benches, *i.e.*, the seats to the right of the Speaker, were insufficient to hold all his followers, and some of them had to sit on the Opposition side.

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I trust that I shall not make this sketch uninteresting to many readers if I attempt to record with some fulness of detail the proceedings of this, Mr. Mowat's first Session as premier. Only thus is it possible to make clear the conditions under which most of his work was done, the nature of the questions which he had to consider, and the resources of learning, experience and judgement—accumulated by years of study and reflection—which he was able to draw upon for their solution. To deal in like detail with the legislative work of the remaining twenty-four years of his premiership would be to write the political history of Ontario from 1872 to 1896, a task foreign to my purpose and perhaps beyond my powers.

The Address in reply to the 'Speech from the Throne' was moved by Mr. W. C. Caldwell, a graduate of Queen's University, and seconded by Mr. R. M. Wells, a graduate of Toronto University, in a speech which at once gave him a position in the House, and doubtless contributed to his advancement in the following Session to the office of Speaker.

During the ensuing debate, the Hon. Matthew Crooks Cameron brought up the question of Mr. Mowat's resignation of the office of a Judge in order to enter political life.

He said: 'I think it much to be regretted that a gentleman of the eminent legal attainments and high moral character of my honourable friend should have taken the course which he has seen fit to adopt, and that the Bench should be

desecrated by his descent from his high position 1873
to enter the political arena. If there is anything that British people are proud of it is the sanctity of the Bench, and it is greatly to be regretted that that sanctity should by any possibility be interfered with. It is evident that while my honourable friend the Attorney-General was still a Judge he was approached by the late leader of the House, for the purpose of inducing him to enter once more into the councils of the country. In my opinion, this House should declare that it was unbecoming for any member of it thus to approach a Judge, or for a Judge to permit such approaches. In my opinion, no occupant of the Bench should be permitted to hold a political position again; certainly not for a considerable period after he has resigned his judicial office. In making these remarks I desire it to be clearly understood that no personal considerations enter into them. The honourable the Attorney-General is a gentleman for whom I entertain the greatest respect and admiration; he has been a personal friend for many years; but I fear that with him party has in this instance seemed to be the all-important consideration.'

Mr. Mowat replied with vigour. He said: 'My honourable friend has been good enough to speak of me very kindly. Indeed, his words are too kind and too flattering, but I can assure him that the kindness of his feelings toward me is not greater than those which I experience toward him. I confess that I do attach a great

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deal of importance to party; but I do not place party before country, and I am for party because I believe—because I know—that the interests of the country are best advanced by means of a well-organized party, founded upon well-recognized principles. My honourable friend has been kind enough to say that I have been chosen to lead the Reformers of Ontario because of my high moral worth. I thank him for that compliment; but he did not see that he was at the same time paying a compliment to the Reform party. They may be right, or they may be wrong, in the estimate which they have been kind enough to place upon my character; but the fact of their choosing me on that particular account shows their high appreciation of that virtue. I know that there are many men in the Reform party well fitted—perhaps better fitted than myself—to fill the place for which I have been selected. Some of them are among my colleagues, and there are others in the House; but it was thought desirable by the party that one of their old leaders should occupy the position again, and I thought it, under the circumstances, my duty not to refuse.

'It has been alleged that my action was not a constitutional one; that it was an unconstitutional thing for me to accept the office of a Minister of the Crown after I had been a Judge. My honourable friend has not taken this ground. Himself an eminent constitutional lawyer, he has thought it best to say nothing on this subject,

although the newspapers have been filled with statements of the kind; and I stand freed by his silence from the charge of unconstitutional action. The honourable gentleman has, however, said that a Judge who left the Bench to enter political life desecrated the sanctity of the Bench. I admit the sanctity of the Bench, but I entirely deny its desecration. It is, in my opinion, a low and degrading view of the life of a politician to say there is no sanctity attaching to it. As I understand my position here as leader of the Reform party, of the Government, and of the House, I think there is as much sanctity in it as in any other in the land. It would be a sad thing, indeed, for our country if the opposite opinion were to prevail. Our whole system of government involves party as a necessity. All statesmen have united in that view, and if that system of government, which has done so much for our own country and the motherland, is one which it degrades a man to take part in, it will be a sad thing indeed for our future history. But such an idea is wholly inconsistent with the whole teaching of British history. I feel that I am as much discharging my duty now, and acting upon as high moral principles, as if I were still an occupant of the Bench. (Cheers.) I entirely repudiate the notion that in the position of a political man, a representative of the people, a maker of the laws, an administrator of justice, there is anything inferior to the position of any Judge in the land. 1873

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'It has been said that a Judge should not permit himself to have any opinions at all upon political matters; that he should not watch at all the course of political events; that he should not be interested at all in what this party or that party is doing; that he should divest himself of all his political opinions, and especially of the feelings and opinions of the party with which he had been associated before he became a Judge. Such a contention is absurd. It is idle to suppose that a man who has spent some of the freshest and best years of his life in active politics, who has been associated with one party or the other and has assisted in their numerous struggles, should suddenly become utterly indifferent to the progress of events with which he had been so intimately identified. It has never been expected of an English Judge, or of a Canadian Judge, that he should so forget his past sympathies and feelings. When a Judge takes upon himself the judicial office, it is expected that he shall decide impartially the cases which come before him, but it is not expected that he shall abandon his political opinions or his political preferences. A large proportion of our Judges, both in England and in Canada, have been men who were actively engaged in political life. Among them I may mention Mr. Draper, the Chief Justice of the Court of Error and Appeal. Honourable members all know how actively he was engaged in political life; and yet since he became a Judge no one has ever had the shadow of suspicion that

his political opinions influenced him in any respect. The same may be said of Chief Justice Richards. Up to the moment of his appointment he was a warm partisan; yet a more honest and upright Judge never sat upon any Bench. Knowing then, from the experience of a long period, both in England and in Canada, that a man interested in political life, in political parties and in political questions, can perform judicial duties without being influenced by them in the least degree, it is absurd to expect a Judge to act as has been suggested. My honourable friend said that if a lawyer took upon himself a judicial office, it should cease to be possible for him to have any political advancement. Does he not stand there as a Conservative, and has not his party lately taken Chief Justice Morris and appointed him to a political office; and Judge Wilmott, and appointed him to a political office? These are things which are done constantly, both here and in England, where, as everybody knows, the Lord Chancellor is a necessary member of the Cabinet and takes an active part in all great questions of the day. It is all very well to take the other side, and to pretend that a feeling of the nature described by my honourable friend exists, but I can assure him that there is no such feeling and no foundation for such feeling.' 1873

Later in the same debate Mr. Bethune made an excellent speech, part of which is as follows :—

'I have been not a little amused by the member for East Toronto. He said that if a Judge held

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political sympathies, it would be impossible for him to do justice. I am sure the honourable gentleman spoke hastily when he made that statement, because it is not long since he himself has acted in a very high judicial capacity as the Commissioner of the Crown Lands of this province. I cannot believe—I have never heard—that the duties of that office were unfairly performed. I have no doubt that the honourable member, when acting as Commissioner of Crown Lands, was a fair and impartial Judge, and that he never waited to ask or think, when deciding between claimant A and claimant B, whether one or other of them was a Reformer or a Conservative. In England the Lord Chancellor constantly disposes of matters coming from the Courts below, yet it has never been suggested, even in the stormiest times, when political animosities ran highest, that in the discharge of his judicial functions the Lord Chancellor has ever been swayed by political considerations from the duty he owed to his God and his country. And if in England no such question has ever been raised, are we any worse in this country ? Is our code of morality lower ? Are we to be told that Judges are not to read the public prints; are to close their eyes and their ears to everything political, to have no feelings, no sympathies ? I am sorry that the honourable member for East Toronto, with his high standing in this House and at the Bar, should have thought fit to commit himself to such an opinion as that the sanctity

of the Bench was desecrated by the departure from it of a Judge. In the administration of justice the Attorney-General should be of as unsullied purity as any one of the Judges of the land. He occupies in this country much the same position as does the Lord Chancellor in England. He recommends the appointment of all the magistrates, prosecutes all criminals, and naturally has weight with the Judges. I consider that there should be a strong expression of opinion of this House in reference to this matter, and therefore I have spoken my mind upon it fully.' 1873

The question raised by Mr. Cameron was further discussed in a leading article by the late Christopher Tyner in the *Hamilton Times*, of which he was then the editor; and as this attack upon Mr. Mowat was the only one ever made which can be said to impugn his personal honour, I have reproduced a portion of Mr. Tyner's editorial in Appendix VI.

The annual financial statement or 'budget speech' of the Provincial Treasurer showed that the Government had determined upon a vigorous 'forward policy.' Under the Sandfield Macdonald Administration the legislative grant for immigration had averaged only $21,600 per year. This was increased to $153,984, or more than seven-fold, the classes of immigrants specially to be aided being farm labourers and domestic servants. The grant for education was raised from an average of $335,350 to $477,000; for agriculture from $69,000 to $87,000, and for colonization roads

Chap. VIII from $53,000 to $146,000. As to this last item, the Treasurer said :—

'We have divided the province into three sections, termed the northern, the western and the eastern sections; the eastern and western sections being separated by the Hastings road, and the northern section comprising Algoma District, which has during the past year become a new acquisition to our country. Until 1872, the whole region north of Lake Superior was almost a wilderness, and, except in so far as the Dawson exploration party had established a small village at Thunder Bay, was almost destitute of inhabitants. There were, indeed, a few lighthouse keepers there, one of whom, in 1871, from mere isolation, was found dead of starvation. In 1872 an immense activity was given to the settlement of this district in consequence of the success that has attended the developement of our mineral lands; and I believe that with proper encouragement and a judicious expenditure of Government money the mineral resources of that large area will be found even more rich than is at present supposed. To encourage the exploration and settlement of this vast region, and to bring the settlements which are springing up on the north shore of Lake Superior into communication with the rest of the province, the sum asked is $32,500.'

The Treasurer estimated the income of the province for 1873 at $3,090,391, and the expenditure at $2,986,938; but as a matter of fact the actual income of the province for the year was $3,314,506,

and the actual expenditure only $2,460,212, leaving $854,294 to be carried to the credit of the surplus fund. 1873

Early in the Session the Attorney-General introduced the legislation relative to educational matters which had been promised in the Speech from the Throne. The Bills for the consolidation of the Public Schools and High Schools Acts were unopposed and passed to a second reading without division, but on the motion for their third reading they were allowed, at the request of several members, to stand over until the following Session.

The Bill to amend the constitution of Toronto University met with some opposition. By the University Act of 1853 the Senate—composed of the Chancellor, Vice-Chancellor and ten members appointed by the Crown—had been made the chief governing body of the University, and, subject to certain provisions relating to income and property, had been entrusted with the management of and superintendence over the affairs and business of the corporation. It was now proposed to restore the powers of Convocation as they had existed under the University Act of 1849. Convocation was to consist of all Doctors and Bachelors of Law, all Doctors and Bachelors of Medicine, all Masters of Arts, all Bachelors of Arts of three years' standing, all Doctors of Science and all Bachelors of Science of three years' standing,[1] and was to have power to elect the Chancellor

[1] In 1881 this was amended so as to make all graduates members of Convocation.

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and fifteen members of the Senate, and to make recommendations from time to time to the Senate as to the government of the University. The composition of the Senate was altered by reducing the number of Government appointees to nine, who, with the fifteen members elected by Convocation, the President of University College, the Chief Superintendent of Education, the Principal of Upper Canada College, a representative of the Law Society, a representative from each affiliated college, a representative of the High School Masters, all former Chancellors and Vice-Chancellors and two members of the Council of University College, were henceforth to constitute the body.

Objection was at once taken by Mr. H. S. Macdonald, on behalf of Queen's University, and by Mr. A. W. Lauder, on behalf of Victoria, that the principals of these two colleges should be included among the *ex officio* members of the Senate. To this the Government replied that the Universities in question were denominational rivals of the Provincial University, and that the result would be not to increase but to diminish the harmony and usefulness of the Senate.

On the third reading of the Bill Mr. Macdonald moved, seconded by Mr. Lauder, to amend the clause relating to the composition of the Senate by adding as *ex officio* members the Provost of Trinity College, the President of Victoria College, and the Principals of Queen's, Regiopolis and Albert Colleges, and of the University of Ottawa. He claimed that, although as regarded their man-

agement, these institutions might be considered as theological and denominational, as to their courses in Arts they were not so, and he declared that there was a feeling that the city of Toronto should not have so great an influence in the Senate. 1873

The Attorney-General—speaking from an experience of twenty years as a member of the University Senate—said that the Provost of Trinity College had positively refused to attend its meetings; and, as for Queen's and Victoria, it was on extremely rare occasions that the gentlemen connected with those colleges, who were now members of the Senate, ever attended. He thought that if representation from outlying colleges was desirable, it would be better to allow the Government to secure it from among the nine members to be appointed by them.

Mr. Macdonald's amendment was lost on division, and the Bill was read a third time and passed. It gave to the graduates of Toronto University a new interest in its affairs, and contributed in no small measure to its present prosperity and usefulness.

Of even more general interest to the public, and especially to those engaged in the administration of our municipal affairs, was the Act to amend and consolidate the laws of the province relating to municipal institutions.

Referring to this Statute in a speech at Toronto in Jan., 1879, Mr. Mowat said :—

'In our first Session we made provision for facilitating the work of self-government by col-

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lecting all the various Acts relating to our municipalities. These Acts were scattered through the Statute-Books of several years. Considerable difficulty was consequently experienced by people who were not lawyers but who had to carry out these laws; and it was evident that the simplest law possible on the subject was desirable. My colleague and friend, Mr. Crooks, undertook the work, and during the first year of my premiership a new Act was passed consolidating and revising all the old Acts, and producing a result of which, in connection with the Assessment Act, the late Chief Justice Harrison—who was probably more familiar with the subject than any other lawyer or Judge—said that these Acts were "*the most complete and perfect code* of the kind that he knew of *in any country of the world.*" '

In the preparation of this Statute Mr. Crooks was ably assisted by Mr. John G. Scott, then Clerk of the Executive Council and now Master of Titles at Osgoode Hall.

Statute revision is never an easy task ; and it was rendered more difficult in this case because the Act of 1866, which formed the basis of the new consolidation, had been passed before Confederation and many of its provisions were now *ultra vires* of the Provincial Legislature. The task of eliminating these, and yet preserving so far as possible the symmetry and completeness of the original Act, was accomplished with great skill and discretion, and the new Consolidated Statute, consisting of more than 500 sections and covering

150 pages of the printed Statutes of the Session, passed the ordeal of examination by the censor at Ottawa without any question being raised as to the jurisdiction of the province to enact it. 1873

The draftsman had evidently kept in mind the fact suggested by Mr. Mowat in the extract above quoted, that the Municipal Act, like the Assessment and School Acts, should be written in such language and arranged in such a form as to be readily 'understanded of the people.' This was accomplished by the omission of all useless verbiage, by re-arranging the sections upon an intelligible and scientific plan, by breaking up the Statute into parts, titles, divisions and subdivisions, and last, but not least, by prefixing to the whole an excellent analytical index, and to each several part, title and division an index of the subjects therein respectively dealt with. For the especial benefit of Judges and lawyers there was also added a schedule showing, with respect of each section of every Act included in the Consolidation, its place in the new Act, or (if any section had been omitted as *effete*, repealed or *ultra vires* of the province) specifying the reason for such omission.

'The Consolidated Municipal Act of 1873' has ever since been regarded as a model, and its plan was followed not only in the general Statute Revisions of 1877, 1887 and 1897, but also in the interim revisions of the Municipal and Assessment Acts made in 1883 and 1892.

'The Act to establish a School of Practical Science' met with the general approval of the House, and a motion by Mr. Merrick to strike out the provision that the school should be located in Toronto was defeated by 41 to 21.

Early in the Session Mr. Mowat introduced two Bills respecting the legal profession. One of these—entitled 'An Act respecting the appointment of Queen's Counsel'—sounded the first note in his long battle for provincial rights. The Bill declared that it was and is lawful for the Lieutenant-Governor by letters patent to appoint from among the members of the Bar of Ontario provincial officers under the name of Her Majesty's Counsel learned in the law for the Province of Ontario. The Hon. M. C. Cameron objected to this as an interference with the prerogative of the Crown, a view which was concurred in by Mr. H. S. Macdonald (Leeds) and Mr. Hodgins (West Elgin). The Attorney-General contended, in answer, that the Lieutenant-Governor had power as a matter of constitutional law and right to appoint Queen's Counsel.

He said : 'The matter seems to me perfectly plain. Under the Constitutional Act we have within our jurisdiction "the administration of justice" as well as control over Crown lands and other matters, which must be conducted in the Queen's name. What business is more the Queen's business than the administration of justice ? It would be strange, indeed, if we have no power to appoint Queen's Counsel. In

order to maintain the propriety of this declaration, it is not at all necessary to assume that the Dominion Government has not also that power, for part of the Queen's business is done under Dominion jurisdiction and part under local jurisdiction. Section 124 of the Confederation Act provides that the Lieutenant-Governor may appoint certain officers therein named, and then it goes on to say that he may "also appoint other and additional officers to hold office during pleasure." Now, Queen's Counsel are clearly provincial officers, and if the Government has a right to appoint any provincial officers, it certainly has a right to appoint officers to do that part of the Queen's business which is within the jurisdiction of the province.' 1873

An amendment by Mr. Cameron, designed to raise the point that the power of appointing Queen's Counsel by the province did not exist already, and would therefore depend entirely upon the validity of the proposed Act, was voted down by 44 to 19, and the Bill was read a third time and passed.

The Attorney-General's Bill to regulate precedence at the Bar was also objected to by Mr. Cameron, who alleged it had been introduced in order to attack Sir John Macdonald, and place Queen's Counsel appointed by the Dominion Government in an inferior position to those appointed by the province. He moved, seconded by Mr. Macdonald, an amendment, giving Dominion Queen's Counsel the same status as pro-

Chap. VIII vincial Queen's Counsel, and precedence according to the date of their appointment; but this was defeated by a vote of 42 to 17, and the Bill was read a third time and passed.

Another important measure introduced by Mr. Mowat was 'An Act to amend the law respecting the election of members of the Legislative Assembly and the trial of controverted elections.' He explained that most of the amendments which he proposed to make by the Bill had been suggested to him by his own judicial experience, or by that of other Judges with whom he had conferred. The principal amendments were the introduction of the audit system which prevailed in England, some provisions as to the trial of controverted elections, and some with reference to the scrutiny of votes.

He said : 'To the first of these I attach a great deal of importance. In substance, it provides that each candidate shall, at or before the day of nomination, appoint an agent through whom all his election disbursements, other than his own personal expenses, shall be paid, and to whom all bills, claims and charges on account of the election shall be sent in. The name and address of the agent is to be announced by the returning officer on the day of nomination, and published in one or more newspapers in the electoral division. After the election, the agent is to send to the returning officer a detailed statement of all accounts so paid by him, which statement is to be similarly published. The object is,

of course, to prevent any secret spending of money at elections; and the knowledge of the fact that the law requires such publicity will have, as it had in England, a great effect in preventing unnecessary or corrupt expenditure. 1873

'With respect to the trial of elections, the principal provision contained in the Bill is one that the candidates shall be liable to oral examination before trial. As an example of the benefits which will result from this, I may mention the South Grenville election trial, where each of the parties was under the belief that a large amount of money had been spent by their opponents. The trial proved that, on the contrary, it was one of the cheapest elections which had ever taken place in the province. Now, if these candidates had been examined before trial, an immense expense would have been saved, for the trial lasted a whole fortnight and during all that time the court-house was filled with witnesses.

'Another amendment intended to lessen the expense of scrutiny is a provision that the Judge may hold the scrutiny in each municipality in the electoral division, instead of bringing all the witnesses to the county town.'

Mr. Cameron expressed his approval of the Bill, and it was carried without amendment or division.

In addition to the Government measures above referred to, two important Bills were introduced by private members: one by Mr. Rykert to amend the law of evidence, and another by Mr. Meredith to consolidate and amend the law as to wills.

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A Bill by Col. Clarke of Wellington, to provide for the taking of votes by ballot at elections of members of the Legislative Assembly, provoked an animated discussion. Mr. M. C. Cameron declared himself opposed to the principle of the ballot as wholly unnecessary in Ontario. He thought the most manly course was for an elector to record his vote publicly. . . . . The ballot, he believed, would never prevent corruption. Corruption would never cease until every elector was compelled to vote and to take the oath, and until every candidate was compelled to swear that he would not bribe, was prevented from having organized committees and from holding any communication with the electors except by speaking and writing—a suggestion so utopian as to provoke a smile. Mr. H. S. Macdonald also opposed the Bill as un-British,[1] and moved, seconded by Dr. Boulter, the six months' hoist. Mr. Bethune, Mr. Deroche, the Hon. Mr. Fraser and the Attorney-General spoke strongly in favour of the Bill, and the second reading was carried by a vote of 50 to 14, the dissentients being Messrs. Boulter, Boultbee, Cameron, Code, Deacon, Fitzsimmons, Hamilton, H. S. Macdonald, Meredith, Merrick, Monk, Monteith, Rykert and Tooley.

Even more interest attached to the Bills introduced by Mr. H. S. Macdonald, to incorporate the Loyal Orange Associations of Eastern and Western Ontario respectively.

[1] This was incorrect. The ballot had been already adopted in England at both municipal and parliamentary elections.

The Committee on Private Bills reported against 1873
the first of these on the ground that 'No sufficient case is made out to warrant the adoption of the Bill,' whereupon Mr. Macdonald moved a reference back to the committee, with instructions to consider the preamble of the Bill as proven and to proceed to the consideration of its several clauses. The debate was long and animated. The Hon. Mr. Fraser, Mr. Scott (North Grey), Mr. Craig (Glengarry) and others spoke strongly against the Bill; the Hon. E. B. Wood, Mr. Fairbairn, Mr. Robinson (Kingston) and others in its favour.

The Attorney-General, in closing the debate, said that he had long ago made up his mind what was his duty in this matter, and he had seen no reason since then to change his view. He thought his Roman Catholic friends were rather too sensitive about a Bill of this kind. Those who promoted it contemplated no insult to Roman Catholics, either in or out of the House. On the other hand, he thought his Orange friends were somewhat too eager to press the Bill. Orange bodies, he said, were legal bodies now, and required no Bill to legalize them. Orangemen would not be one whit stronger if the Bill passed, or one whit weaker if it was thrown out. All that was asked was an additional convenience in doing that which they could legally do now, and he did not see on what principle this could be refused by any legislative body. With reference to the secrecy of the Orange body, to which his friend Mr. Fraser had

Chap. VIII so strong an objection, he himself could not see that that was any objection. What harm could there be in signs and passwords by which the members of the same body might know each other? Respecting the charge that it was a party organization, he quoted several cases in which this was disproved by the fact that the body was divided, some of its members taking one side in politics and some the other. He thought there were quite as strong Protestants outside the Orange Association as in it, and—apart from the feeling which was always mixed up in such matters as that now before the House—he could see no grounds for refusing the incorporation asked for.

A division was taken on Mr. Macdonald's amendment, which was carried by 38 to 30, Messrs. Mowat, Bethune, Deroche, Clark (Norfolk), MacLeod, Fairbairn, Webb, and S. C. Wood voting in the majority. All the members of the Government, except Mr. Mowat, voted against the amendment.

On the third reading Mr. Fraser moved two amendments, one reciting in full the Orange obligation and declaring that it appeared therefrom that the association is a politico-religious association which the House should not encourage, which was lost by 32 to 21, Mr. Mowat again voting in the majority. Mr. Fraser then moved another amendment to the same effect, which was lost on a similar division, and the third reading of the Bill was carried by 31 to 22.

But the opposition in the Cabinet was too strong for Mr. Mowat to resist; and when the Lieutenant-Governor came down at the close of the Session to give the royal assent to the Bills which had been passed, the Acts incorporating the Orange Associations of Western and Eastern Ontario respectively were reserved by him for Her Majesty's pleasure. 1873

Not having received the assent of the Lieutenant-Governor, they were referred as of course to the Minister of Justice, Sir John A. Macdonald, whose duty it was to advise the Governor-General whether or not they should be passed. Sir John was thus placed in a dilemma. If he recommended the passing of the Bills, he would alienate his Roman Catholic supporters; if, on the other hand, he advised their disallowance, his Orange friends would be offended. He chose a middle course, and, holding the Bills to be within the legislative authority of the province, sent them back to the Provincial Legislature for further consideration. Meanwhile, however, the Government had introduced a Bill respecting Benevolent, Provident and other Associations, which enabled the Orange Association to become incorporated without a special Act for that purpose. The situation was thus wholly changed, and Mr. Mowat, who in the Session of 1873, had voted for the Incorporation Acts, strongly urged the promoters of the Bill to incorporate under the general Act. This, however, they refused to do, and in the Session of 1874 the 'three months' hoist' was moved by Mr. Hod-

Chap. VIII gins, a Government supporter, and carried by 41 to 30, Mr. Mowat voting in the majority. Orange Incorporation Bills were afterwards introduced in 1875, 1876, 1877, 1878, 1881 and 1882, but in every case they failed to obtain a sufficient majority, and it was not until 1890 that the Orange Grand Lodge of British North America was incorporated by the Parliament of Canada.

The Bill of Dr. Clarke (Norfolk), to prohibit the use of intoxicating liquors as a beverage, caused another interesting debate, in which the usual number of temperance (?) speeches were made. Objection having been taken to the measure on the ground that it was not within the jurisdiction of the Legislature, Mr. Mowat was called upon to express his opinion, whereupon he declared that, having given careful consideration to the question, he was of opinion that the Bill was *ultra vires* of the Provincial Legislature. In this opinion the leader of the Opposition, Mr. M. C. Cameron, fully concurred, and the Speaker ruled the Bill out of order.

Several other Bills, introduced by private members during this Session, failed to pass into law. One by Mr. Bethune, to provide that in an action by a woman for slander, imputing to her immoral or chaste conduct, it should be unnecessary to allege or prove special damage, was objected to by the Attorney-General and withdrawn. One by Mr. H. S. Macdonald, providing that a verdict of a jury need not be unanimous was discharged, and another to amend the election law was defeated

by 40 to 17. Bills by Mr. Hodgins, allowing attorneys and solicitors to make bargains with their clients as to costs, and another by the same gentleman relating to sheriffs' sales of lands, were withdrawn at Mr. Mowat's request, as was also a Bill by Mr. S. C. Wood to amend the Assessment Act. 1873

But the most important measures of the Session were those introduced by the Attorney-General, entitled, 'An Act for the better administration of justice in the Courts of Ontario,' and 'An Act respecting the Municipal Loan Fund Debts.'

In introducing the first of these, Mr. Mowat said :—

'The Bill does not involve absolute fusion. It is not the intention of the Government at present to propose that step, and it has been thought desirable in the meantime to make as few changes as may be consistent with the object proposed. The Act, as its preamble indicates, is designed to make the Courts of Law and Equity "ancillary to one another respectively, for the more speedy, convenient and inexpensive administration of justice." It happens occasionally that there is a doubt as to whether a litigant should resort to the one Court or the other, and it is important that such doubts should be removed. Formerly no equitable matter could be dealt with at law, and the only remedy was to file a bill in Chancery, restraining the proceedings in the Common Law Court. To some extent—but only to some extent—has this evil been remedied. It has been

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decided that a party sued in a Common Law Court, and claiming a good equitable defence, may set it up in the common law action; but it has been held that this can be done only when the equitable defence is "an absolute, perpetual and unconditional bar to the plaintiff's demand." Now the present Act will give to the Common Law Courts an increased equitable jurisdiction. A party suing for a purely money demand, although the claim be equitable only, can no longer be met with the objection that his remedy is in the Court of Chancery; and, in order that the Common Law Courts may be able to do complete justice without the necessity of another suit, it is proposed to give them the right of transferring a case from one Court to the other.

'In no case are more costs to be incurred in bringing an equitable matter into a Court of Law, or a legal matter into the Court of Chancery, than if the party had sued in the Court which at present has jurisdiction.

'There are certain other changes proposed in the mode of trial. One is that in any action where equitable issues are raised by the pleadings, they shall be tried without a jury: but the Court or Judge, upon the application of either party may order a jury; and in actions of libel, slander, criminal conversation, seduction, malicious arrest and false imprisonment, all questions which have heretofore been tried by a jury shall still be so tried, unless the parties otherwise agree. It is proposed also that juries shall be

bound to give special verdicts upon questions submitted to them, when requested so to do by the Judge. The Bill gives power to the Judges of the Superior Courts of Common Law to sit separately, as the Judges of the Court of Chancery now do. It is not proposed, of course, to compel them to sit separately, but merely to give them the power to do so. 1873

'Another important change is that which allows issue to be joined without the intervention of written interrogatories. I have also provided that a fraudulent conveyance of lands by a judgement debtor who has only an equitable interest may be set aside on summary application to the Court or a Judge in Chambers without the necessity of filing a Bill in equity.

'A provision in the Bill which I think it necessary to notice is that there shall be an additional Court of Assize in the county of York, and a fourth sitting of the County Court there, to be held on the second Tuesday in the month of May. This is in consequence of the great accumulation of business before these Courts, and has been suggested to me by the Judges.

'Lastly, I have provided that the Judges of the Superior Courts may make general rules in the same way as the Court of Chancery now does, without the necessity of laying these rules before Parliament.'

The Bill received the approval of the leader of the Opposition, and was adopted without a division. It was the first step in that long series

Chap. VIII of law reforms with which Mr. Mowat's name will always be associated.

Not less memorable than the Administration of Justice Act was the measure by which the long-vexed problem of the Municipal Loan Fund debts was finally and equitably disposed of, and forever removed from the arena of politics.

As to this subject, a few words of explanation seem to be necessary and may not be wholly uninteresting.

The 'Consolidated Municipal Loan Fund' had been created in 1852 by the Hincks-Morin Government. Its object, as stated by Sir Francis Hincks in his *Reminiscences* (p. 316), was 'to enable the municipal councils of the province to borrow money through the instrumentality of the Government on more favourable terms than they could possibly do by their unassisted efforts.' The moneys forming the fund were to be borrowed by the province in the London market at a rate not exceeding 6 per cent., and loaned by the Government to the municipalities at 8 per cent.,—and the Act (16 V., c. 22) declared in its preamble that this plan 'would greatly facilitate the borrowing, upon advantageous terms, of such sums as may be required by any municipality in Upper Canada for effecting or aiding in effecting important public works.'

It may well be doubted whether, as a rule, it is either necessary or desirable to 'facilitate the borrowing' of money by municipal councils, especially from the Government of the day; and

such an opportunity should least of all have been afforded them at a time when the air was full of railway projects and the company promoter was abroad in the land. 1873

Municipal corporations all over the province were allowed by a too complaisant Government to borrow from the fund sums far in excess of their actual requirements; and the moneys thus obtained, instead of being applied toward the erection of schools and other public buildings, or the improvement of the local highways, were too often invested in railway undertakings which in many cases turned out to be wholly unprofitable.

The town of Cobourg, for example, with a population of less than 5,000 and an annual assessment of less than $110,000, borrowed half a million from the fund and invested it in the Cobourg and Peterborough Railway, which, by reason of the construction of a rival line from Port Hope, became utterly worthless to the town. Guelph became liable for $120,000, and Woodstock and Stratford for $100,000 each, and so in the case of many other municipalities.

A period of financial stringency having naturally followed the era of inflation, many of the municipalities found themselves involved in obligations which it was difficult, if not impossible, to discharge, and within a few years after the establishment of the fund these debtors to it fell seriously into arrear. The Government, however, proved to be a most lenient creditor, and when this was seen to be the case, many of those municipalities

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which had at first made an honest effort to meet their obligations felt it less incumbent upon them to do so, and declined to make any further payments.

Thus the Municipal Loan Fund debts became every year a less valuable asset to the province, which had still to go on paying interest for the money that had been borrowed to establish the fund. In 1859 an attempt was made to compound with the defaulting municipalities by directing that instead of the sums then due to the province there should be annually raised in each of the municipalities a sum equal to five cents in the dollar on the annual value of the assessable property therein, that this should form the first charge upon all funds raised in the municipality for any purpose whatever, and that no municipal officer should after December 1st, 1859, pay any sum out of municipal funds till the amount thus fixed had been paid to the Receiver-General. The arrangement, however, proved abortive. The liabilities of the municipalities went on increasing, and in 1872 the total amount of arrears due to the fund was about twelve million dollars. Meantime, by the Act of 1866, the limit of municipal taxation had been fixed at two cents in the dollar upon actual values, a limit which rendered it practically impossible that many of the indebted corporations should ever discharge their obligations to the fund and still continue to carry out their ordinary municipal business. Perhaps the situation might not have been allowed to become so

acute had it been wholly destitute of political advantage to the party in power. But it must be manifest that an indebted municipality was largely at the mercy of the Government of the day, and the knowledge that the leniency or, *per contra*, the severity of the provincial creditor might depend upon the result of a close election was not calculated to promote, or even to permit, the free exercise of the franchise. It was clearly undesirable, alike for the province and for the indebted corporations, that this state of things should continue, and the new Government found themselves in an exceptionally favourable position for dealing with the problem and disposing once for all of the *damnosa haereditas* left to them by their predecessors. 1873

The revenues of the province since Confederation had largely exceeded its expenditure, and the Liberal party on coming into office in 1871 found themselves in possession of a surplus of nearly seven million dollars. Of this $1,900,000 had already been appropriated towards railway aid, but there remained over five million dollars which it was their duty to use for the best interests of the province.

Two courses were open: either to continue the policy of the Sandfield Macdonald Government, *i.e.*, to retain in the hands of the Executive the disposition of these accumulated moneys, or—which was more in accord with the principles of the Liberal party—to entrust their distribution to the municipalities themselves, under such con-

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ditions and with such safeguards as would secure the application of the money to public purposes of general utility. Mr. Mowat adopted the second of these alternatives, and advantage was taken of the opportunity to solve at once and forever the problem of the Municipal Loan Fund indebtedness.

In broad and general outline the plan proposed by the Government for the distribution of the surplus was to allot to each county, city and separated town in the province, which had not been benefited by the Act of 1859, a sum equal to two dollars per head of its population as determined by the census of 1871, subtracting therefrom, in the case of municipalities indebted to the Municipal Loan Fund, the amount of such indebtedness; and, where this exceeded the amount of the proposed subsidy, taking new debentures for their balance, payable in twenty annual instalments. By a master-stroke of policy these new debentures, or the proceeds of their sale, were to be treated as part of the subsidy and turned over to the municipalities entitled to share in the distribution of the surplus as part of their *per capita* allowance. Thus the Provincial Government ceased to have any further interest in or responsibility for their collection. The money and debentures so distributed were to be applied in aid of railways, or of drainage, in the building or improving of court houses, gaols or hospitals, in providing, for the use of the municipality, industrial farms, houses of industry or refuge, or in the building or improving of schools, public halls, bridges, harbours,

piers, gravel roads, or other permanent improvements, or in paying off municipal obligations already contracted for permanent works. 1873

Thus—briefly stated—the scheme of distribution would seem to be a very simple and obvious one, but it was in reality complicated by the existence of other factors necessary to be taken into account in arriving at a comprehensive and equitable solution. It was characteristic of the new Premier that, before submitting his propositions to the House, he had taken the trouble to work out the whole problem in minutest detail, and to anticipate and provide against every reasonable criticism which could be made by an able and vigilant Opposition.[1]

As thus submitted the Government scheme was embodied in thirteen resolutions prepared by the Attorney-General himself, and introduced by him on March 7, 1873. It is difficult to abbreviate the language of these resolutions and yet to express clearly their general effect: but without endeavouring to do this, even at the risk of being tedious, it is impossible to convey any clear idea of the difficulties to be encountered.

First, it was declared that the debt of each municipality to the fund should be estimated

[1] Both before and during the Session Mr. Mowat spent many busy hours in working out a settlement of the complicated questions connected with this matter. On Feb. 10, 1873, Mrs. Mowat writes to a friend :— 'Oliver is as busy as it is possible for a man to be. That Municipal Loan Fund Act is like a millstone round his neck. Even his private secretary feels it so; at least he told me the other day that he had had a frightful dream, part of which was that he was in a graveyard and had seen his own gravestone, on which were carved the letters "M. L. F." '

Chap. VIII upon the basis fixed by the Act of 1859, but in any case where the statutory limit of taxation fixed by the Municipal Act of 1866 (two cents in the dollar), might be insufficient to pay five per cent. annually upon the debt as thus adjusted, it was further provided that the liability of the municipality should be reduced to such a figure as would be represented by an annual rate of two cents in the dollar upon the assessment of 1872 after meeting the ordinary and necessary expenditure of the municipality, to be calculated on the basis of that year. It was further provided that where injurious legislation, affecting the securities and position of an indebted municipality, had taken place without the concurrence of the municipality, or against its active opposition, but in the interest or supposed interest of the public, and had rendered valueless railway investments made by the municipality out of moneys borrowed by the fund, the balance due from the municipality over and above the subsidy should be cancelled. There was still another matter germane to the subject, though not strictly forming part of it, which was, however, taken into account by the Government in arriving at a settlement with the municipalities. A large part of the moneys borrowed from the fund had been invested in railways, many of which had doubtless contributed to the developement of the province at large. Now, however, the province itself, by the Railway Aid Acts of 1871 and 1872, had appropriated nearly two millions of dollars toward railway aid,

and a still larger sum was included in the estimates of the current Session. It was manifestly unfair that, while the municipalities benefited by these grants received their full *per capita* allowance of two dollars, those which in the past had borne the burden now assumed by the province should receive no consideration therefor. The resolutions accordingly provided that with respect to railways built before Confederation, by means of municipal aid and without any provincial grant, a further allowance should be made to such of the said municipalities as had not benefited by the Act of 1859 at the rate of two thousand dollars per mile of railway so aided, such allowance being distributable among the municipalities which had granted this railway aid in the ratio of the sum contributed by each to the aggregate amount contributed by all. 1873

With respect to railways thus aided after Confederation but prior to the Railway Aid Act of 1871, a similar allowance was made at the rate of one thousand dollars per mile which was similarly distributable.

The resolutions contained other minor details and provided for certain special cases, but the above synopsis gives a general idea of their scope and effect. The solution proposed was so equitable as to commend itself to the judgement of the House and the country, and, though challenged by the Opposition in no less than six divisions, the thirteen resolutions were carried through the House on the 27th March, 1873, without any substantial amendment, by majorities ranging from twenty-

Chap. VIII nine to fifty-three in a House of eighty-two members.

Thus did the new Government during its very first Session vindicate its ability to deal in a thoroughly satisfactory way with a problem which had for twenty years been regarded as insoluble, and the Municipal Loan Fund question was permanently removed from the arena of politics.

Speaking, some years later, of the Act by which the Municipal Loan Fund debts had been so satisfactorily adjusted, Mr. Mowat said:—

'In 1872 these municipal debts, with the interest upon them, amounted to something like $12,000,000. Municipalities which could have paid, and had no sort of equitable or just defence for not paying, had never paid. Some of those owing very large sums to the fund had for many years made no attempt at paying anything on account of principal or interest to the province. Others had done so for a few years, and since then had been equally neglectful of their obligation. All this time the body of the people, including those who resided in unindebted municipalities, were paying interest upon the money which had been thus borrowed by the indebted municipalities from the Government, and for which the Government had never been repaid. That was not the only wrong connected with this state of affairs. Important sections of the country had been kept back in the race for improvement in consequence of the heavy indebtedness which lay upon them, and which it

was well known they could never discharge. 1873
In some of these cases sums so large had been borrowed that from the first it was evidently beyond the power of the borrowing municipalities to pay them, and in other cases, where it had not been originally beyond their power to repay the loans, it had become so by reason of the accumulation of unpaid interest. Property in these localities was depreciated, and the consequence was that important sections of the country were not partaking of the general prosperity of the rest of the province, which it was the common interest of us all that every part of it should enjoy.

'There was another evil which in one sense was worse than either of those which I have mentioned, viz.: that the danger which every municipality in default felt to be imminent was the risk of its being at any time suddenly called upon to pay its arrears to the fund. This had the effect of keeping municipalities to a large extent enchained to the Government of the day and was a source of undue influence.

'We found a way, which the Legislature adopted, by which the indebted municipalities were relieved upon principles admitted to be fair and just, and at the same time satisfactory to the unindebted municipalities, and we compelled these defaulting municipalities to pay that were able to pay and had no equitable reason to urge for non-payment. We required them to pay to the extent of their abilities, and we defined certain principles by which that object should be

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accomplished. In this settlement no party preferences were observed. We applied exactly the same rule to a Tory municipality as we did to a Reform municipality, and as we did to those which were neither Tory nor Reform—if any such there are. Not only under this Act has the vast load of municipal indebtedness to the Government been relieved, but the sum thus far distributed is no less than $3,225,778, all of which has been applied in works of public utility, such as roads and bridges, $1,181,682; education, including schoolhouses built, school debts paid and investments for school purposes, $705,468; in paying debts caused by granting aid to railways, $987,889; in building and improving town halls, $147,346 (72 town halls have been built or paid for, and also a large number with markets and lock-ups). The rest of the three millions and a quarter has been applied in town and village improvements, waterworks, steam fire engines, making and improving harbours, buying and laying out public parks, agricultural grounds, etc.'

CHAPTER IX

'WISE TO RESOLVE, AND PATIENT TO PERFORM'

THE Session of 1873 was the most important and fruitful one since Confederation,[1] and it is the more interesting because it so clearly foreshadows those general lines of policy and reform upon which the administration of the affairs of the province was to be carried out by the new Premier for nearly a quarter of a century. It shows also Mr. Mowat's mode of dealing with public questions and with public men; and the student of his biography may learn what qualities they were which enabled him to secure so soon and to retain so long the confidence and support of his followers, and the respect and esteem of even his political opponents. Not the least among these was his genial temperament and his genuine kindliness of heart. Like Abou Ben Adhem, he 'loved his fellow men,' and was sincerely interested in the concerns of those about him. I think it is Burke who says that, rather than a deep study of books a statesman needs much intercourse with life and large converse with men. Such converse and intercourse

1873

[1] The average number of Acts passed during the five preceding Sessions had been 93; the number passed in 1873 was 163, and some of these were of such length and importance that the volume in which they are printed is more than double the usual size.

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Mr. Mowat thoroughly enjoyed, and it was not long before he became well-known to and friendly with nearly all the members of the Legislature on both sides of the House. Although he was a keen student of character, his judgements were never severe or uncharitable. Anything like cynicism, pessimism or bitterness was wholly alien to his nature. He accorded to his political opponents the same freedom of opinion and the same desire to judge righteous judgements which he claimed for himself; and when they were unable to see eye to eye with him he never attributed their divergence of views to unworthy motives or invincible ignorance. Differences of opinion there might be : personal acrimony there was none; and, as an admirer of his once said, 'He never lost a friend and never made an enemy.'

Again, he was a perfectly sincere man; sincere in fact as well as in word; truth-telling as well as unaffected. He was never known to mis-state or over-state his own case, and—what is rarer still—he never misrepresented or distorted the argument of an opponent. In his speeches in the House or on the platform, in his answers to questions and applications, and in his replies to deputations, he said, so far as possible, that which it was agreeable to hear, but no more than was judicious, and never what was untrue.

But it was not only Mr. Mowat's qualities of heart which made him, before the close of the Session of 1873, the real, as well as the titular, leader of the provincial Liberal party.

In the course of a few months he succeeded 1873
to a wonderful degree in winning the confidence of his party, both in the House and outside of it. His just and comprehensive settlement of the Municipal Loan Fund debts showed his ability to solve difficult and complicated questions of administration; while the legislation of the Session proved his mastery of the subjects with which the House was called upon to deal, and his keen grasp of the constitutional position of the province in the scheme of Confederation. The Acts respecting the appointment of Queen's Counsel and the precedence of the Bar were emphatic declarations of provincial rights, yet Sir John Macdonald, though he regarded them with no friendly eye, declined the responsibility of advising their disallowance; and the correctness of Mr. Mowat's views as to their constitutionality was affirmed many years afterwards by the Court of Appeal. The Administration of Justice Act was a bold step in the direction of law reform; such as could not have been attempted by any one not thoroughly familiar with the existing practice of the Courts, both of law and equity. The Acts relating to education, to mechanics' liens, to masters and workmen, and to married women, were all wise and well-considered measures of reform; and the consolidation and revision of the numerous Statutes relating to municipal institutions were hailed as a boon by that large class of persons who are engaged in the administration of our local affairs. The preparation of the sched-

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ules appended to the Municipal Loan Fund Act, showing the amount payable under its somewhat complicated provisions to the various municipalities, gave Mr. Mowat a unique opportunity of becoming acquainted with prominent men from all parts of the province. So soon as it became known that a Government measure for the distribution of the accumulated surplus was to be passed during the Session of 1873, a stream of deputations began to pour in upon the Premier, each urging the special claims of its particular locality. To all these Mr. Mowat lent a willing and attentive ear, listening not only with patience but with interest to the arguments adduced, and often showing, by his questions or remarks, an unexpected familiarity with the circumstances of the particular case. Indeed, in few situations was he more happy than in receiving such deputations. His manner toward them was uniformly courteous, and, though he was chary of promises, he usually succeeded in making those who waited upon him feel that their statements and arguments would be carefully weighed and duly considered by one whose sole desire it was to do complete justice to all concerned, irrespective of political considerations or party advantage.

In the House itself his influence soon became paramount. While in no sense of the word an orator, his speeches were clear and convincing and bore the impress of sincerity and conviction. One might say of them, as Justin McCarthy said of the speeches of Richard Cobden, that 'though

there were very few sentences which a schoolboy would be enjoined to get by heart as examples of successful declamation, they were nevertheless characteristic of the man. Not a word was wasted. It was plain speaking; a constant appeal to the reason, the judgement and the better qualities of men, without any attempt to control by mere rhetorical display.' 1873

Indeed, few men were more free from prejudice than Mr. Mowat. We have already seen, in the previous chapters of this volume, how earnestly he strove by reading, discussion and reflection to come to a right decision in choosing his political party, and how, in spite of the Conservative environment amid which his youth and early manhood had been passed, he finally determined to cast in his lot with the Reformers. His training as a Judge had developed and strengthened this dispassionate attitude of mind, and he carried with him into the Legislature the same judicial fairness which he had exhibited on the Bench—the mental habit which characterized another great Canadian politician whom Mr. Mowat afterwards came to know and admire. I mean the late Sir John Thompson, of whom a leading Conservative once complainingly said in my hearing: 'Thompson will never make a politician. He won't even consider whether a thing is good for the party until he is first quite sure that it is good for the country.' This freedom from passion and prejudice in the consideration of public questions—indeed, of all questions—contributed immensely

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to Mr. Mowat's influence with both friends and foes. Even his opponents felt that their arguments would receive from him fair treatment and due consideration; and the result was distinctly to elevate the tone of the debates in the House, and to prevent them from deteriorating into a mere exchange of personalities. Mr. Sandfield Macdonald had been brusque, and at times even coarse in his denunciation of political opponents ; Mr. Blake was often too impatient of opposition to refrain from sarcastic retorts, which wounded without convincing; but Mr. Mowat's more genial disposition and evenness of temper saved him from these errors, and his ready repartees were not less effective because the thrust was generally delivered with a smile and often couched in a compliment. He had learned with advantage to answer the question of Horace:

'Ridentem dicere verum
Quid vetat?'

There were, however, one or two members of the House upon whom politeness would have been wasted, and to these Mr. Mowat showed that, when it was necessary to do so, he could strike home, and strike hard. I remember an occasion when one of these gentlemen had made a bitter attack upon the Hon. Mr. McKellar, accusing him, I think, of fraud or embezzlement in connexion with some trust funds, long before he had become a member of the Legislature. Mr. Mc-

Kellar explained the circumstances to the satisfaction of the House, but his venomous assailant returned to the charge; whereupon the Attorney-General rose and, amid the plaudits of his followers, gave the offending member a castigation which those who listened to it will probably never forget. 1873

A still more important factor in Mr. Mowat's influence was the thoroughness with which he mastered every detail of the subjects with which he had to do. If, as Buffon says, genius is only a transcendent ability to take pains, the Attorney-General was a genius, though he himself would have earnestly disclaimed such a distinction. Slow in arriving at a conclusion on any public question, not because his mental processes were less rapid than those of other men, but because it was his habit to consider the matter from every point of view, and to weigh the arguments on both sides before coming to a decision—his judicial temperament here again manifested itself and with the most satisfactory results. A great English writer has pointed out the connexion between two Anglo-Saxon words, the verb 'to know' and the noun which indicates a ruler. 'It is,' he says, 'the man who "kens" or knows, the "kenning" or "canny" man whom our ancestors called the *koenig* or king'; and notwithstanding all changes of circumstance the fact remains that in a parliamentary system such as ours, where everything depends upon the confidence of a party in its chief, it is, *caeteris parilus*, the wise and prescient

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man who inevitably becomes the leader. If his followers are sure that every step which he advises has been first carefully considered, that no proposition is advanced until every point and bearing of it has been well thought out and discussed beforehand, their confidence in him becomes increasingly great, while his opponents' hopes of successful attack are proportionately diminished.

Once more—though it may seem at first sight paradoxical—much of Mr. Mowat's influence and success as a Reformer and the leading spirit in a Reform Government was due to his conservatism. Party names, as he himself pointed out in a passage from one of his letters—which I have quoted at p. 77—are in this respect misleading; and the so-called Conservative Opposition in the Ontario Legislature was in many respects more radical in its views and opinions than the majority of those who, in the House and throughout the province, ranked themselves as supporters of Mr. Blake, Mr. Mackenzie and Mr. Mowat. There were, indeed, among the latter some to whom Mr. Mowat's methods appeared too conservative, and the current of reform to move too slowly; but they were few in number, and even the most aggressively radical among them came ultimately to recognize the wisdom of his course, and the nicety with which he appreciated not only the trend of public opinion but the limits of its force. 'Reforms,' we are told by Mr. Ruskin, 'are effective in proportion to their timeliness,' and it is the part of a statesman to 'take occasion by the hand' if he

would widen the bounds of freedom. In many of Mr. Mowat's reforms, and especially in those relating to the amendment of the law, he had to contend against a strong force of obstinate prejudice in favour of the existing order of things. Had he been less cautious, less patient, less prescient, his attempts would undoubtedly have been doomed to failure and defeat; but step by step one goes very far, and though he moved slowly he moved surely, without haste and without rest. 1873

In the extension of the franchise these qualities of patience, caution and prescience were especially evident. Manhood suffrage was the goal to which the policy of the Liberal party inevitably tended; yet if Mr. Mowat's Government had attempted in 1873 to introduce an Act for that purpose the measure would have been considered too radical to secure a due amount of popular support. It was necessary to 'educate the country' before attempting a change so far-reaching; and it may be interesting to note by what gradual steps the pre-destined result was ultimately accomplished.

In 1872 the right to vote in elections to the Legislative Assembly depended upon the ownership or occupancy of real property of a certain value. This was in accordance with the traditions which we had inherited from the mother-country, and if any Liberal leader had then proposed to abolish the real property qualification of voters and to introduce a suffrage practically based upon manhood alone he would doubtless have been met by charges of disloyalty and radicalism,

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and would, not improbably, have failed in the attempt. Yet within sixteen years the franchise in Ontario was extended to this limit, and that almost without a parliamentary division.

The first step, taken in 1874, was to grant the right to vote to those who were in receipt of an annual income of $400, although it might not be derived from land. It was a just and wise measure, a recognition of the right of that class of wage-earners which forms so large a part of our population, especially in towns and cities, to be represented in Parliament, and one which could scarcely be opposed on any reasonable ground. Nor was the principle of the Bill denied by the Opposition. They urged only the postponement of its operation until after the next general elections, or the increase of the income qualification from $400 to $600 per annum. A motion in favour of 'enfranchising and giving the right to vote to all male persons of the age of twenty-one years and upwards' was, however, negatived by a vote of more than twelve to one, which shows that the country was not then ripe for the adoption of manhood suffrage.

Three years later—viz.: in 1877—the Government took a further step, and an Act was introduced extending the franchise to farmers' sons resident with a parent or parents on the farm of the latter. This measure, though logically less defensible than the Income Franchise Act of 1874, had many and weighty arguments in its favour. It recognized a qualification based upon the occupancy of land; and the class to which it applied

occupied an equitable if not a legal position unlike that of any other in the community. It was, however, objected to as class-legislation; an objection plausible enough on its face, but one which with equal justice might have been urged against many other most desirable reforms, and which found little favour in the House. The second reading was carried by 51 to 27. 1873

In 1885 the franchise was further extended, and the right to vote at elections to the Legislative Assembly was granted to:—(1) Owners, tenants or occupants of real estate to the value of $200 in cities and $100 in townships and villages; (2) Persons in receipt of $250 a year by way of income or as wages ; (3) Persons entered on the assessment roll as 'householders' ; (4) Sons of landholders, resident with their fathers and assessed as such ; (5) Enfranchised Indians or persons with part Indian blood otherwise qualified and not residing among Indians, though sharing in the tribal income.

These Acts having paved the way, the final step was taken in 1888 by the 'Manhood Suffrage Act.' Meantime, popular opinion had been educated up to the point of accepting this ultimate change, and the Bill proposed by the Government was passed without a division and amid a general chorus of approval.

It was not, after all, so radical a measure as may at first sight appear. It is impossible to determine with accuracy how far the franchise was extended by each of these four measures respec-

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tively, because allowance must be made for the normal increase in the population of the province; but a comparison of the total vote cast in the six general provincial elections held between 1871 and 1890 may not be uninteresting. In the election of 1871, when the right to vote depended upon a real property qualification, the total vote cast in the province was 119,697; in 1875, after the enfranchisement of income voters, it rose to 187,702, an increase of 68,000, or nearly 60 per cent., confined almost entirely to the towns and cities.[1] In 1879, after the right to vote had been extended to farmers' sons, the vote rose from 187,702 to 245,300, or a little more than 30 per cent. In 1886, the last election before the passing of the Manhood Suffrage Act, 316,111 votes were cast; while in 1890, after that Act had become effective, the total vote was 326,686, an increase of only 10,575, or little more than 3 per cent.

Not only were additions to the electorate thus cautiously made, but extreme care was taken to secure the preparation of accurate voters' lists and to entrust this duty to persons entirely free from partisan bias. Until 1874 the voters' list prepared annually from the assessment rolls by the clerk of every local municipality was

[1] 'We found that by the Income Franchise Bill 1,547 votes had been added in Toronto, while outside of Toronto only fifteen had been added in the whole county of York. In the two large counties of Leeds and Grenville, having 22 municipalities, only 15 votes had been added outside of the towns. In Prescott five had been added, and in Gananoqué an equal number. In the county of Victoria only eight votes had been added, all of them in the town of Lindsay.'—Hon. C. F. Fraser in the debate on the Farmers' Sons' Franchise Bill, Jan. 30, 1877.

made only in duplicate, one of these duplicates being retained among the records of the municipality, and the other deposited with the Clerk of the Peace for the county. There was, indeed, a provision for the correction of errors by means of an application to the County Judge; but no regular sitting for this purpose was prescribed by the Act, and the application could be made only after the applicant had gone to the trouble and expense of inspecting one of the duplicate lists and specifying upon affidavit the errors which it was desired to have corrected. 1873

Now, however, the local clerk is required every year to print, at the expense of the municipality, 200 copies of the draft voters' list as prepared by him from the assessment rolls, and to transmit by post a specified number of these printed lists to such persons as, from their position in the county or local municipality, the Legislature have considered most likely to be interested in securing the correct registration of voters, *e.g.*, the members of the local municipal council and of the county council; the M.P. and M.P.P. for the county or riding, everyone who was a candidate at the last election for either of these offices; every postmaster, schoolmaster and schoolmistress in the municipality, and also a number of public officials, such as the Sheriff, Registrar, Clerk of the Peace, County Clerk, etc. The Act further requires the public posting up of all such lists at the courthouse of the county and at every post office and schoolhouse in each municipality. Ample pro-

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vision is made for the revision of the draft list by the County Judge at the instance of any voter or person entitled to be a voter, and the list, thus carefully revised and corrected, may at any time before an election be again revised by striking off the names of voters who have died since the date of the last revision, and by making such other alterations as are necessarily consequent thereon. The list thus corrected and certified by the Judge is made conclusive evidence of the right to vote, save in the case of persons disqualified by law, by non-residence or by reason of corrupt practice. The simplicity of this system of registration, the elimination of all political influence in the settlement of the list, and the saving of expense upon a protracted scrutiny of votes such as often took place in controverted election trials under the old law are points which strongly differentiate our system of registration, not only from that which prevails in the United States, but from the cumbrous procedure established by the Dominion Franchise Act of 1885.

But the policy of the new Government included not only the extension of the franchise and the securing of accurate voters' lists. It was necessary also to protect the voter from any influence which might affect the free exercise of his right of choice—to make him, as far as possible, in fact, what he was already in name—a 'free and independent elector.' The best means to this end seemed to be the adoption of the ballot. The experiment had recently been made in England by

the Ballot Act of 1872, and with apparent success. 1873
The Premier, however, acted in this matter with his usual caution. In his first Session, 1873, a Bill was introduced by a private member—Col. Clarke of Wellington—for the adoption of the ballot in provincial elections. It was read a second time by a vote of 50 to 14, and, the result of this *ballon d'essai* having proved satisfactory, the Attorney-General in the following Session introduced a more elaborate measure, which was unanimously passed by the House after approving speeches from both sides. Among those who favoured the Bill were such leading members of the Opposition as the Hon. Stephen Richards, Mr. Rykert, Mr. Boultbee and Mr. D'Arcy Boulton. Some of the Opposition speakers declared that the Act would be more helpful to their party than to the Government—a prophecy which, so far as one can judge from election returns, proved to be correct. Indeed it would seem that neither the extension of the suffrage nor the introduction of the ballot resulted—or were expected by the Premier to result—in any party advantage to his Government; but they were just and desirable reforms, and, as such, they were embodied in the policy of the Government and carried out by their legislation.

Scarcely less important and far-reaching than the extension of the franchise and the laws relating to elections were the changes in the constitution of the Courts and the simplification of legal procedure effected by the Administration of Justice

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Acts of 1873 and 1874, and the Judicature Acts of 1881 and 1895. In the franchise reforms the Government marched with popular opinion;—their function was only to guide and control an existing and, indeed, an irresistible force—but when they came to deal with the question of law reform they ventured upon more dangerous ground, and almost every inch of progress had to be won against a force of established and intelligent conservatism. 'Nothing,' says an English essayist, 'is more difficult or dangerous than to carry out a measure of church reform,' and an attempt to revolutionize a system of legal procedure which had come down to us from the time of the Plantagenet Kings was scarcely less difficult and dangerous. On the other hand, Mr. Mowat had the advantage—an immense advantage where lawyers and judges are concerned—of English precedent for the changes which he proposed. In the mother-country, as here, there had been two sets of Courts, and two distinct systems of procedure, founded upon the old distinction between Courts of Law and Courts of Equity. In a common law action the suitor could only claim against one or more defendants some established remedy for some recognized class of injury, and judgement was merely sought as to whether, aye or no, the plaintiff was entitled to the remedy for which he asked. Hence the pleadings were drawn according to set forms intended to raise such issues of fact or law as would determine this question in the affirmative or negative. The Court of Chan-

cery, on the other hand, had been established be- 1873
cause Courts of Law could not always do complete justice between all parties concerned. It was an appeal to the conscience of the Sovereign, and the pleadings were simpler than at common law.

It was, however, a monstrous anomaly that in Her Majesty's Courts of Justice there should be two systems of judicature organized in different ways, administering justice on different and sometimes even on opposite principles, using different methods of procedure and applying different remedies. Again, the Court of Chancery had—or assumed—jurisdiction to deal with large classes of rights, which the Common Law Courts were impotent to protect or enforce. They had no power to restrain the commission of a wrong, nor could they deal with any but legal rights. Their system of procedure confined them to giving judgement for debt or damages only, and—having been originally founded on the basis of trial by jury—it was framed upon the supposition that every issue of fact could be so determined. Thus it came to pass that—under the more complex conditions of modern society and business—numbers of cases arose to which that mode of trial could not be adopted, and these either found their way ultimately into the Court of Chancery, or the Common Law suitor was obliged to have recourse to private arbitration in order to supply the defects of an inadequate procedure.

Such a state of affairs came at last to be considered intolerable even in England, where pre-

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The Commissioners say :—

'Such a consolidation would at once put an end to all conflicts of jurisdiction. No suitor could be defeated because he had commenced his suit in the wrong Court, and it would no longer be possible to send him from Equity to Law or from Law to Equity to begin his suit over again in order to obtain his proper relief. . . . . The Supreme Court should be divided into as many chambers or divisions as the convenient dispatch of business might require. All suits should be instituted in the Supreme Court, and not in any particular division; and each division should possess all the jurisdiction of the Supreme Court with respect to the subject matter of the suit and with respect to every defence which might be made therein, whether

on legal or equitable grounds, and should be able to grant such relief or to apply such remedy as may be appropriate or necessary in order to do complete justice between the parties.' 1873

This report was in Mr. Mowat's possession when he introduced the Administration of Justice Act in the Session of 1873. It contains in brief outline the very principles which, many years after, he embodied in the Judicature Acts of 1880 and 1881; and the fusion thus gradually accomplished in the Courts of this province had, even before Mr. Mowat ceased to be a Judge, been the subject of frequent discussion between him and Mr. Blake. Yet in this matter, as in his franchise reforms, he moved slowly and tentatively toward the end in view. Had he attempted in 1873 what he accomplished in 1880, he would have had to face such a force of obstinate prejudice from lawyers and Judges that the value, as well as the popularity of his reform would have been seriously affected. Step by step, however, this great change was effected; and now a return to the old system of practice would be as unpopular as were the initial steps of reform.

But it was not only with regard to the legislation initiated by the Government that Mr. Mowat showed his tact and ability as a leader of the House. Upon the Attorney-General devolves the duty of examining all proposed legislation, and of determining what shall be allowed to pass and what shall be opposed by the Government. When the volume of this legislation is considered, the magni-

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tude of the task becomes at once apparent. During the Session of 1873, though only 163 Bills passed into law, more than 230 were introduced, some of them (as we have seen) by prominent lawyers on both sides. Two leading members of the Opposition, Mr. Rykert and Mr. Meredith, each made contributions of value to the legislation of the Session; while suggestions made by others, including prominent Government supporters, were withdrawn at the instance of the Attorney-General (See *ante*, pp. 196-7). So, in the first Session of 1874, 150 Bills were introduced but only 103 were passed. Mr. Ardagh's Bill to amend the Assessment Act, being objected to by Mr. Mowat, was withdrawn. One introduced by Mr. Bethune, relative to the administration of estates, was referred to a special committee and never heard of again; while another respecting the registration of titles was dropped at the suggestion of the leader of the House. A Bill by the late Speaker, Mr. Currie, respecting the limitation of actions relating to mortgage sales, and providing for the conduct of such sales, was withdrawn at the request of the Premier; and others to limit the franchise in municipal elections to owners and occupants of real property and to give the right of voting to women, and to permit cumulative voting at municipal elections according to the amount of the voters' assessment never reached a second reading. A Bill by Mr. Farewell, respecting the improvement of water privileges, was read a second time, and then postponed for further consideration; and

one by Mr. Scott (North Grey), to prevent the adulteration of spirituous and fermented liquors, was withdrawn upon the opinion of the Attorney-General that it was *ultra vires* of the Legislature. On the other hand, Mr. Meredith's Bill, protecting the wages of mechanics, workmen, labourers and other employees from attachment to the extent of $25, was adopted by the Government; as was also a Bill of Mr. Clarke (Wellington), requiring the owners of threshing and other machines to guard against accidents. Mr. Bethune contributed two valuable Acts, one relating to the apportionment of rent as between landlord and tenant, and the other respecting allowances to executors, administrators and trustees. 1873

In the Session of 1875-6 Mr. Hodgins's Bill to amend the Acts respecting County Courts, was withdrawn at Mr. Mowat's suggestion, as was Mr. Currie's Bill to allow cumulative voting at municipal elections and on money by-laws. Two other Bills introduced by Mr. Currie were opposed by Mr. Mowat: one, providing for manhood suffrage at elections to the Legislative Assembly, was defeated by 37 to 18; and another, to abolish grand juries, was withdrawn, the Attorney-General considering it to be *ultra vires*.

Mr. Bethune proposed that in civil actions tried with a jury in the Superior or County Courts the clerk should note the time when the jury retired, and if after one hour eleven jurors could agree, their verdict should be accepted as sufficient;

Chap. IX after two hours ten jurors, and after three or more hours nine jurors might give a verdict, and any verdict so given was to have the same effect as if it had been unanimous. The Bill gave rise to an interesting debate; but, the Attorney-General disapproving of the change, it was withdrawn, as was another Bill introduced by Mr. Bethune respecting compulsory voting at elections.

The records of Session after Session are full of similar instances; and if the province is indebted to Mr. Mowat for a great deal of useful legislation, it owes him scarcely less for the firmness with which he controlled the House and prevented the enactment of measures which, in his opinion, were harmful, unnecessary or ill-timed. Especially was this the case with regard to the Municipal and Assessment Acts. The number of amendments proposed to these almost staggers belief. They averaged about twenty-five each Session, and in one Session the Bills to amend the Municipal Act alone were forty-two in number. To preserve what was good in these and reject the rest, was a task requiring immense labour. In the federal Parliament and in those provinces which have a bi-cameral Legislature, part of this responsibility can be devolved upon the Upper Chamber, but in a province like ours the Executive Council is the only guardian against hasty legislation; and it requires no small amount of tact on the part of the leader of the Government to secure the withdrawal, or, if necessary,

the defeat, of measures introduced by prominent supporters of the Administration. 1873

Moreover, it is necessary that all measures submitted to the House should be considered from the standpoint of their constitutionality as well as from that of their expediency. Most readers of this sketch are, no doubt, aware that the limits of provincial and Dominion jurisdiction are defined—though somewhat loosely—by the British North America Act; but it may not be a matter of so common knowledge that every Statute of the Dominion or of a province is subject to supervision and disallowance by a higher authority. In the case of Dominion Statutes this authority is the Imperial Government; in the case of provincial Statutes the Governor-General in Council, upon the advice of the Minister of Justice for the time being. The British North America Act does not itself prescribe the grounds upon which this power of disallowance may be exercised, nor is there any binding provision on the subject. In 1868, Sir John Macdonald, in a dispatch to the then Governor-General, laid down certain principles which have since been regarded as governing the matter, but these have not the force of statutory law and were not invariably followed even by Sir John himself. Moreover, owing to the somewhat vague wording of the Confederation Act, and especially in earlier days when its true construction was very imperfectly understood, there was room for considerable difference of opinion as to the limits of provincial jurisdiction.

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What, for example, was the status of a provincial Lieutenant-Governor? He is appointed by the Governor-General in Council, and holds office during the pleasure of the Governor-General. Provincial Acts assented to by him may be disallowed by the authority which appointed him, and his title itself indicates that of a deputy, and not one who holds his office directly under the Queen. Does he then represent the Crown for any, and if so, for what purposes?

The Dominion Parliament has jurisdiction *inter alia* over 'trade and commerce.' Does this include all questions relating to mercantile law, or may trade and commerce within the province be regulated by the local Legislature?

The Dominion has sole jurisdiction in regard to 'bankruptcy and insolvency.' Does this include the winding up of insolvent companies incorporated by provincial legislation, and does it include legislation with regard to indigent debtors?

Again, the Dominion alone can deal with the subject of 'marriage and divorce'; but the province has exclusive jurisdiction with regard to the 'solemnization of marriage in the province.' The Dominion alone may deal with 'the criminal law, except the constitution of courts of criminal jurisdiction, but, including the procedure in criminal matters,' while each of the provinces has committed to it 'the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction,' and 'the imposition of

punishment by fine, penalty or imprisonment for enforcing any law of the province relating to any matter coming within provincial jurisdiction.' 'Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes' are under provincial control. Does this, or does it not, permit the abolition of tavern and shop licenses? Lastly, the Provincial Legislature has exclusive control over 'property and civil rights within the province,' a phrase so large and vague as to be almost unintelligible. 1873

Quite naturally, therefore, there were from the beginning differences of opinion between Dominion and provincial authorities as to the true interpretation of these and other sections of the British North America Act. The view which was held at Ottawa during nearly the whole of Mr. Mowat's premiership was that the provincial Executive and Legislature were intended to be subordinate to the authority of the federal Government, that the Lieutenant-Governor was not the representative of the Queen but of the Governor-General, and that in cases of doubt as to the respective jurisdictions that doubt should be determined in favour of the general Executive and Parliament. Indeed, Sir John Macdonald's idea seems to have been, at least at the beginning, that these local Legislatures were to be a species of magnified county councils, with this difference, that while the acts of a county council are not subject to disallowance, except by the Courts, those of provincial Legis-

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Fortunately for Ontario, a very different notion was held by Mr. Blake and Mr. Mowat. They both considered the provincial Legislature to be in no sense the handmaid of the federal Parliament, but a co-ordinate body, possessing, within its sphere of influence as defined by the B. N. A. Act, 'authority as plenary and ample as the Imperial Parliament in the plentitude of its power possessed or could bestow,' and that 'a Lieutenant-Governor is as much the representative of Her Majesty for all purposes of provincial government, as is the Governor-General for all purposes of Dominion government.'

It was fortunate, also, for the success, and perhaps even for the integrity of Confederation, that these views, so often championed by Mr. Mowat before the Judicial Committee of Her Majesty's Privy Council, received the endorsement and approval of that august tribunal, and have now an authority no less binding than that of an Imperial Statute.

CHAPTER X

THE TWO SESSIONS OF 1874

THE first change in the *personnel* of the Mowat Administration took place in November, 1873, when the Hon. R. W. Scott, having resigned the Commissionership of Crown Lands to become a member of the new Liberal Government at Ottawa, was succeeded by the Hon. T. B. Pardee, and the vacancy thus created in the office of Provincial Secretary and Registrar was filled by the appointment of Mr. C. F. Fraser, member for South Grenville. The Hon. Mr. Fraser continued to be Provincial Secretary until April 4, 1874, when, the Department of Public Works having been re-organized under 37 V. c. 26, he became its first head, and held that office until his resignation on account of ill-health in 1894. 1873-4

The first Session of 1874 began on January 7, and lasted until March 24. The Hon. Mr. Currie having resigned the Speakership during the recess, Mr. R. M. Wells, member for South Bruce, was, on motion of the Attorney-General, seconded by Mr. Hodgins, unanimously elected as his successor.

Early in the Session the Attorney-General brought again before the House the Acts to amend and consolidate the law respecting collegiate institutes, high schools and public schools, which

Chap. X had been read a second time during the previous Session and postponed for further consideration. Meantime these Bills had been submitted to the principal educational authorities of the province, and especially to the Chief Superintendent of Education (Dr. Ryerson) and his deputy (Dr. Hodgins), by whom, as well as by the Attorney-General, they had been carefully revised. In returning them to Mr. Mowat, Dr. Ryerson writes:

'I have now carefully considered all the modifications proposed in the amended School Bills, and have read the final revise. I think it but just to you to say that I not only concur in the provisions of these Bills, but I believe that they will constitute an epoch in the improvement of our school system as acceptable to all parties and as efficient as possible. I beg to thank you for your personal courtesy and attention, and I hope you will succeed in carrying the Bills through the Legislature without mutilation or amendment.'

Early in the Session both Bills were referred to a Committee of the House, of which the Attorney-General was chairman; and, after a minute examination of their provisions, were passed without any amendment. One of the most important changes made by these Acts was the reconstitution of the Council of Public Instruction. Hitherto this body had consisted wholly of members appointed by the Crown. This was now altered so as to provide that the Council should be composed of eight members to be appointed by the Lieutenant-Governor, together with the Chief Super-

intendent of Education, or his Deputy, *ex officio*, and one member elected by each of the following bodies : (a) The council or governing body of each university in the province; (b) the masters and teachers of high schools and collegiate institutes; (c) the inspectors of public schools, and (d) the legally qualified masters and teachers of public and separate schools. 1874

This was in accordance with the policy which had already given the graduates of Toronto University a share in its government; and the immediate result was to increase the popularity and usefulness of the Council of Public Instruction.

'The Administration of Justice Act, 1874' was the second step in the series of Mr. Mowat's law reforms. It provided for increasing the judicial strength of the province by the appointment of three additional Judges, to be called 'Justices of the Court of Error and Appeal,' who, in addition to their duties as Judges of that Court, were empowered to preside over Courts of Assize and to hold Chancery sittings. In order to secure the due dispatch of the increased business of the Superior Courts, matters which, according to the previous practice, had been heard by the full Courts of Queen's Bench and Common Pleas in term were, with certain exceptions, to be hereafter heard and determined in the first instance by a single Judge; and it was provided that a Judge of each of the Courts should sit in open Court every week, as well in as out of term, except during vacations, for the purpose of disposing of all

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the Court business thus brought within his jurisdiction. Provision was also made for the appointment of an officer to be called the 'Master in Chambers,' to whom might be delegated authority to do much, if not most of the business theretofore fallen upon the Judges in Chambers. The civil and criminal sittings of the Common Law Courts were made separable, and non-jury cases in the Common Law Courts were made triable at the Chancery sittings in the county town where the venue was laid. It was further enacted that (except in certain specified cases) the presiding Judge, instead of asking the jury to give either a general or a special verdict, might direct them to answer any questions of fact and that upon their answers to these questions the verdict might be entered. The practice in actions of replevin and dower was simplified, as was also the manner of selecting grand and petit jurors. And, lastly, it was provided that the County Court Judge of any county should have authority to hold the County Court, the Court of General Sessions, or the County Judge's Criminal Court, in any county in the province.

The additions to the judiciary provided for by this Act having later become the subject of absurd misrepresentation in a pamphlet bearing the name of the Hon. D. L. Macpherson, Mr. Mowat thus replied in a speech delivered at Toronto on January 8, 1879 :—

'Amongst other things the Senator states that "the Reform Governments at Ottawa and Toronto

have created two Courts of Appeal, the Court of Error and Appeal for Ontario and the Supreme Court of Ottawa." What will you think of such a statement when I tell you that the Court of Appeal was established as long ago as 1794, and that the Act establishing it provided for nearly the same classes of appeals from the Court of Queen's Bench as now. The Court of Chancery was established in 1837, and it was then provided—forty years ago—that there should be appeals from that court to the Court of Appeal. Some years later—viz.: in 1849—the Court of Common Pleas was established, and an appeal was at that time allowed from that court to the Court of Appeal, which then received the name of the Court of Error and Appeal. Thus, part of the jurisdiction of the Court of Appeal, which we are said to have created, had its origin over eighty years ago, part of it forty years ago, and part of it more than a quarter of a century ago. The Senator expresses the valuable opinion of an amateur, not a lawyer, that the law allows too many re-hearings or appeals, and he insinuates, if he does not positively assert, that we were the persons who made this the law. Let me tell you that since 1851 no important classes of appeals have been sanctioned by legislation, except those which Sir John Macdonald added—I do not say wrongly added—by a law passed when he was Attorney-General, and that the whole matter of appeals in ordinary cases has been in existence substantially as it is so many

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years before either of these Reform Governments was in power.

'The Senator condemns the Reform party also for the appeals allowed to the Supreme Court, forgetting, in his partisanship, that the Act establishing the Supreme Court corresponded exactly in that respect with the Bill previously brought in by his own party, under the leadership of Sir John Macdonald, and that the Act of the late Government not only did not go farther in this direction than Sir John's Bill, but it actually cut off one expensive appeal which Sir John wished to retain, viz.: the appeal from the Supreme Court of Canada to the Judicial Committee of the Privy Council in England.'

The 'Act respecting Escheats and Forfeitures,' passed during this Session, gave rise to the first of those conflicts with the Dominion authorities over provincial rights to which I have referred in a previous chapter. The facts were these: One Andrew Mercer had died in Toronto in 1871, intestate, and without legitimate heirs, and—according to an old rule of English law, imported into this province by the first Statute of the First Parliament of Upper Canada—his estate escheated (*i.e.*, reverted) to the Crown. Mr. Mowat accordingly drafted, and the Legislature passed, an Act declaring that 'wherever any lands in Ontario, have escheated to the Crown by reason of the person last seised thereof . . . . having died intestate and without lawful heirs . . . . the Attorney-General may cause possession of such

lands to be taken in the name of the Crown, or, if possession is withheld, may cause an action of ejectment to be brought for the recovery thereof.' The Act was objected to by the Hon. Mr. Fournier, then Minister of Justice, on the ground that escheat is a prerogative of the Crown, and that the exercise of that prerogative rests with the Governor-General of Canada, and not with the Lieutenant-Governor of a province. He quoted, in support of his opinion, a dispatch from Lord Kimberley, then Her Majesty's Secretary of State for the Colonies, to the Governor-General, in reference to the case of Lepine in Manitoba, as follows :—'The Lieutenant-Governors of the provinces of the Dominion . . . . are a part of the colonial administration staff and are immediately responsible to the Governor-General in Council. They do not hold their commissions from the Crown; and neither in power nor privilege do they resemble those Governors of colonies to whom, after special consideration of their personal fitness, the Queen, under the Great Seal and her own hand and signet delegates portions of her prerogative and issues her own instructions.' Mr. Fournier went on to state that while the Parliament of Canada consists of the Queen, the Senate and the House of Commons, the provincial Legislature of Ontario consists only of a Lieutenant-Governor and a Legislative Assembly. 1874

Mr. Mowat, in an elaborate reply, opposed these views, holding that all property which stood in the Queen's name at Confederation, except that held for military and naval purposes, belongs

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to the provinces; that the Lieutenant-Governor and the provincial Legislature act in the name of the Queen, and not in the name of the Governor-General, and that all powers and authorities which, under any Imperial or provincial Act, were, before the Union, exercisable by the Governors or Lieutenant-Governors of the Province of Upper Canada in Council, were now vested in and exercisable by the Lieutenant-Governor of Ontario in his Executive Council.[1]

Mr. Fournier, however, declined to be convinced, and the Act was disallowed by proclamation on April 3, 1875.

Thereupon Mr. Mowat instituted an action in the Court of Chancery to obtain possession of the lands in question. The defendants objected: first, that the Court had no jurisdiction; and, secondly, that if the Queen was entitled to the property it was the Attorney-General of Canada, and not the Attorney-General of Ontario, who was entitled to represent her. Vice-Chancellor Proudfoot, before whom the case was heard, decided both these questions in favour of the plaintiff, holding that the Court of Chancery had jurisdiction, and that the Attorney-General of Ontario was the proper person to represent the Crown and to appropriate the escheat to the uses of the province.[2]

[1] Mr. Mowat's opinion as to this point was affirmed many years afterwards by the Judicial Committee of the Privy Council in the case of *The Liquidators of the Maritime Bank of Canada* vs. *The Receiver-General of New Brunswick*, [1892] A.C. 437.

[2] 20 Gr. 126.

The case was then taken to the Ontario Court of Appeal, where the judgement of the Vice-Chancellor was unanimously affirmed.[1] On appeal to the Supreme Court it was agreed by both parties that the issue should be limited to the broad question whether the Government of Canada or the Government of the province is entitled to estates escheated to the Crown for want of heirs. The majority of the Court held adversely to Mr. Mowat's contention, and considered that under the circumstances the Government of Canada, and not the Government of Ontario, was entitled to the escheated lands. The Chief Justice (Sir William Ritchie) and Mr. Justice Strong dissented from this view, holding that the conclusion arrived at by the Vice-Chancellor and the Court of Appeal for Ontario was correct, and that the escheated lands had become the property of the province.[2] Thereupon the case was carried to the Judicial Committee of the Privy Council, where it was argued before a very full Bench by Mr. Horace Davey, Q.C. (now Lord Davey), Attorney-General Mowat, Q.C., and John R. Cartwright, Q.C., of the Canadian Bar, for the Crown; and by the Solicitor-General, Sir Frederick (afterwards Lord) Herschell and Z. A. Lash, Q.C., of the Canadian Bar, for the respondent. The unanimous judgement of the Judicial Committee, delivered by the Lord Chancellor (Lord Selborne), was : '(1) That lands in Canada escheated to the Crown for defect of heirs belong to the 1874

[1] 6 Ont. App. Rep. 576. [2] 5 S.C.R. 538 (1881).

Chap. X province in which they are situated and not to the Dominion ; (2) that although sec. 102 of the B. N. A. Act imposes upon the Dominion the charge of the general public revenue, as then existing, of the provinces, yet, by sec. 109, the *casual* revenue arising from lands escheated to the Crown after Confederation was reserved to the provinces under the words "lands, mines, minerals and royalties," including therein royalties in respect of lands, such as escheats."[1]

The disallowed 'Act respecting Escheats and Forfeitures' was accordingly re-enacted by the Ontario Legislature, and is still in force as chapter 114 of the Revised Statutes, 1897.

The Act to provide for the incorporation of joint stock companies by letters patent was so obviously a necessary and desirable measure that it met with no opposition; but the Act respecting benevolent, provident and other societies, though equally unobjectionable, was not equally fortunate. It provided, in accordance with English precedent, that any five or more persons might, by signing before a Superior or County Court Judge, a declaration setting forth certain specified particulars, and filing this declaration in the office of either the Provincial Registrar or the Clerk of the Peace, become incorporated for any benevolent or provident purpose, or for any other purpose not illegal, save the purpose of trade or business, etc. Those members of the Opposition who desired to embarrass the Government by pressing upon them the

[1] 8 App. Cas. 767.

necessity of a special Act for Orange incorporation saw that the passing of this measure would destroy the *raison d'être* for the repetition of such an attempt, and, accordingly, they resisted the proposed legislation by every means in their power. On the motion for third reading, Mr. Merrick and Mr. Deacon, the members in charge of the Orange Incorporation Bills for Eastern and Western Ontario respectively, moved the 'three months' hoist,' but were defeated by a vote of 36 to 24, and the Bill was passed. 1874

The legislative grants to charitable institutions had been hitherto made upon no fixed principle, and, as an inevitable result, it was importunity and influence which determined what institutions should receive aid, and the amount that was granted to each of them. Public sentiment was opposed to the entire withdrawal of these grants; but the Government adopted a system by which the sum received annually by each institution was to depend upon the amount of work done, and of the contributions received by it from other sources. For this purpose, the principal charitable institutions of the province were divided into three classes: the first including hospitals; the second, houses of industry and houses of refuge for the aged and indigent poor; and the third, orphan and Magdalen asylums. The Act provided that out of moneys appropriated annually by the Legislature for charitable purposes, there should be paid to each hospital for every patient treated therein during the preceding year, twenty cents; to each

Chap. X house of industry or refuge mentioned in the schedule, five cents; and to each orphan or Magdalen asylum one and one-half cents per day for every inmate maintained during the preceding year. A supplementary grant, not exceeding one-quarter of the amount received by the institution from all other sources was to be made at the following rates: To hospitals, ten cents per day for each day's treatment of a patient; to houses of refuge two cents, and to orphan, etc., asylums one-half cent per day for each day's lodging and maintenance of an inmate; and a maximum amount was fixed in each case beyond which no aid should be granted.

The list of institutions mentioned in the schedules, and to be aided under the provisions of the Act of 1874, included ten hospitals, three houses of industry and refuge, and thirteen orphan and Magdalen asylums, or in all twenty-six institutions; and the total grant for these was fixed at $42,980. In 1896, the last year of Mr. Mowat's premiership, the number of institutions mentioned in the schedules to the Act had increased to sixty-eight, viz.: eighteen hospitals, twenty-one houses of refuge and twenty-nine orphanages, and the legislative grant had risen to $194,841.

During the summer of this year Mr. Mowat began the execution of a project which had been for some time in his mind, viz.: the revision and consolidation of the public general Statutes affect-

ing the Province of Ontario. These were of three classes, viz.:— 1874

(1) Imperial Acts having the force of law in Canada;

(2) Statutes of the old Province of Canada still forming part of the law of Ontario, and

(3) Statutes passed by the Legislature of the Province of Ontario since Confederation.

Following the example set in the Consolidation of 1859—in which he had himself taken part—he appointed for this purpose a Commission consisting, besides himself, of three Judges of the Court of Appeal, viz.: Chief Justice Draper, Hon. G. W. Burton and Hon. C. S. Patterson, and three barristers, Messrs. Thomas Langton, Charles R. W. Biggar and R. E. Kingsford. The Hon. Thomas Moss, upon his appointment as a Judge of the Court of Appeal, the Hon. Vice-Chancellor Blake and His Honour Judge Gowan, County Court Judge of the county of Simcoe, were subsequently added to the Commission.

The Judges were purely honorary Commissioners, the clerical work of the consolidation being done by the three barristers above named. The task was one of considerable magnitude and importance, involving, as it did, the minute examination of more than two thousand Statutes and the consideration, upon many of them, of questions of jurisdiction which had not arisen in the Consolidation of 1859. The Act of Confederation having divided the legislative powers of the old Parlia-

Chap. X ment of Canada between the Dominion and the province, it was necessary, in the case of all Statutes passed before 1867, to determine whether any of them, or any part of them, was now *ultra vires* of the provincial Legislature, and so to reconstruct these Statutes as to retain as far as possible their original effect.

The work of the three junior Commissioners was done under the immediate and personal supervision of the Attorney-General, in the building on the north-west corner of Simcoe and Wellington Streets (since demolished), then occupied by his Department and known as 'York House.' Meetings of all the Commissioners were held weekly, or oftener, and at these all questions of doubt and difficulty were submitted to and discussed by the Judges and the Attorney-General, the decision being noted in the official minutes, and the Statute being, accordingly, either consolidated, amended or referred for consideration to the Dominion authorities.

The Commissioners made three reports, dated respectively December 12, 1874, December 11, 1875, and December 30, 1876. The first report was accompanied by tables showing the consolidation in outline; the second announced the completion of the collection of Imperial Acts, and contained suggestions for legislation to remove discrepancies discovered in the course of the work and otherwise to facilitate the consolidation. With this report was also submitted a volume of 633 pages, being a portion of the collection of enact-

ments of the Dominion Parliament and of the old Province of Canada which were not now within the legislative authority of Ontario; but the completion of this portion of the work was afterwards abandoned in view of the steps which had been taken by the Dominion Government for a consolidation of Statutes which would include these Acts. With the third report was submitted a complete draft of the Revised Statutes, which was laid before the Legislative Assembly at the Session of 1877, and will be hereafter referred to in discussing the legislation of that Session. 1874

The fourth and last Session of the Second Legislature of Ontario began on November 12 and ended on December 21, 1874.

The principal measure of the Session was 'An Act to re-adjust the representation in the Legislative Assembly,' by which the number of the members of that body was increased from 82 to 88, so as to correspond with the number to which Ontario had become entitled under the census of 1871 in the Dominion Parliament. The Act was most carefully drawn, so as to preserve as far as possible the same limits for legislative as those which already existed for municipal purposes, and to remove certain inequalities caused by the increase of population in the western and north-western parts of the province as compared with the older sections.

In a speech at Toronto in January, 1879, Mr. Mowat thus described the effect of the Act and

Chap. X the reasons for the plan of re-distribution which it involved :—

'We had to deal with inequalities in the existing representation which were very great. For example, the town of Niagara, which returned one member, had, according to the census, a population of only 3,693. It was not even a county town; St. Catharines was the county town and had no member, but was represented only as part of the county of Lincoln. The average population of a constituency, as ascertained by dividing the population of the province by 88, was 18,418, and how was it possible when dealing with the subject of representation to defend on any principle the giving to Niagara with its small population a member all to itself, while the county of Essex, with upwards of 30,000 people, had but one member ? We, therefore, added the town of Niagara to the county of Lincoln, its own county. The effect was to give two members to the county of Essex, which came next in population after the other counties had been supplied whose population was larger. Essex, at that time, was represented by Mr. Albert Prince, Q.C., a supporter of the Government. He gave it as his opinion that, from local causes, Essex, if divided, would return two Opposition members; but we carried out here, as elsewhere, the principle of representation by population, whether, in this instance, it would work against us or not. It did work against us. At the next election Essex returned two Oppo-

sition members, and ever since that time it has done the same. We gave three members to the county of Simcoe, which had previously had two, and these three members have ever since been members of the Opposition. On the same ground of population we gave a third member to the county of Grey. The former member for the North Riding, who was opposed to the Government, told the House what the result would be politically; and he was right. When the elections came on, both East Grey and North Grey returned Oppositionists. The districts of Wellington, Grey and Cardwell lie together. They were represented by eight members, of whom five were opponents and three were supporters of the Government. The re-adjustment gave to these counties eleven members instead of eight; and at the next election, instead of three supporters of the Government and five supporters of the Opposition, this territory returned three Government supporters, as before, and eight oppositionists instead of five. One of the new seats we gave to the municipal county of Dufferin, all parties being agreed that, so far as practicable, a municipal county should have a member of its own. We had no idea then—we have no idea now—that Dufferin will ever return a Reformer. I suppose there is not another county in the whole province where, in a party contest, a Reformer would get a smaller vote. 1874

'I mention these things in order that you may see that we felt it our duty in this matter, as

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in our legislation generally, to adopt that course which should be defensible on sound principles, whether it might happen in the result to be injurious to the Reform party or not. We believed—and we believe still—that in giving effect to a sound and just principle the Reform party would gain in the long run, and we looked not to party gain except as the result of justice and fair dealing.'[1]

The increase in the membership of the Legislature from 82 to 88 was strenuously resisted by the Opposition. On the third reading of the Bill, the Hon. M. C. Cameron moved the 'three months' hoist,' which was defeated by 40 to 20. Mr. Meredith then moved to strike out the words 'eighty-eight' in the first section, and substitute 'eighty-two,' thus leaving the number of members unchanged; but this was defeated on a straight party vote by 45 to 29. The Hon. Stephen Richards, member for Niagara, moved a resolution opposing the abolition of that borough, but it was defeated by 44 to 24; and eight other amendments proposing new methods of distribution were lost by similar majorities.

An exciting incident of the Session was a motion by Mr. J. C. Rykert, member for Lincoln, demanding a committee of inquiry into certain allegations made at a public meeting at Wallacetown by the Commissioner of Public Works (Hon. Archibald McKellar), to the effect that Mr. Rykert had demanded $4,000 from the Canada Southern Railway

[1] See Appendix VII.

Company, to support their incorporation Bill during the Session of 1869, and that he had afterwards received money from the Great Western Railway Company, as the price of his opposition to a later Bill introduced in the interest of the Canada Southern. 1874

Mr. McKellar moved an amendment, adding other charges; and a committee consisting of the Hon. M. C. Cameron, the Hon. J. G. Currie, Messrs. W. R. Meredith, A. S. Hardy and H. M. Deroche, was appointed to investigate them all. This committee sat until nearly the end of the Session and then presented a report, finding that the Great Western Railway Company had in February, 1870, paid Mr. Rykert a thousand dollars for parliamentary services during the Session of 1869; that Mr. Edward D. Tillson had paid Mr. Rykert $100 for parliamentary services in connection with the Bill to incorporate the town of Tillsonburg, passed in the Session of 1871-2; that the Toronto Railway Company had paid Mr. Rykert $150 in connection with legislation asked for by them, and that, at the time of the payment of these moneys, Mr. Rykert was a member of the Legislative Assembly.

The report of the committee having been received and unanimously adopted, Mr. Mowat was strongly urged to move at once for Mr. Rykert's expulsion from the House for a scandalous violation of its rules; but he was too generous and chivalrous thus to deal even with a bitter political opponent, and contented himself with moving that the report be entered upon the journals of

Chap. X the House and printed. At the next election for Lincoln Mr. Rykert was defeated by Mr. Sylvester Neelon, and, though elected in 1876, he was unseated on petition and never again sat in the Ontario Legislature.

In his election address to his constituents in North Oxford before the general election of 1875, Mr. Mowat thus referred to the legislation of 1874 :—

'We have passed Acts amending the marriage laws of the province so as to remove grave questions which had for years been occasioning distressing doubts as to the legality of marriages solemnized under circumstances of informality, or other legal irregularity unknown to the parties at the time, but rendering insecure their legal relation and the status of their children. By the same Act we provided a system for solemnizing future marriages in Ontario, which, for the first time in the history of this province, has had the practical result of placing all marriages by the clergy of every denomination on the same footing. Looking to matters of property, we have given repose to land titles by materially shortening the period for disputing the title of persons who are in possession. We have given, in the interest of all persons who have anything to insure, a new and necessary security to the policies on which they rely for relief against loss from accidental fire, and we have improved and consolidated the laws for establishing, on a safe basis, mutual insurance companies in every locality where they are desired by the people.'

CHAPTER XI

THE THIRD LEGISLATURE

THE House was dissolved on December 23, 1874, and the first general election under Mr. Mowat's premiership was held on the 18th of the following January. The chief line of attack chosen by the Opposition was that the Government had been unduly extravagant, and had already squandered the surplus accumulated by Mr. Sandfield Macdonald. But the answer was clear and conclusive. The annual expenditure of the province had admittedly been increased, but this increase had been more than counterbalanced by a steadily expanding revenue. The excess of receipts over expenditures amounted in 1872 to $1,212,791; in 1873 to $854,294, and in 1874 to $1,101,119; and most of the increases had been made for the promotion of education and agriculture, the maintenance of hospitals and charities, the making of colonization roads, and the erection and construction of public buildings and public works, the cost of which, had it not been paid by the Government, would have fallen upon the municipalities directly interested. It was shown also that, while during the administration of Mr. Sandfield Macdonald not one farthing of the accumulated surplus had been given back to the municipalities, there had been returned to them by way of surplus dis- 1875-9

Chap. XI tribution during the three years of Liberal administration a sum of no less than $2,381,530, and that the actual assets of the province on September 30, 1874, after all these disbursements had been made, amounted to $9,462,486, while its total liabilities were $4,064,909, leaving a clear net surplus of $5,397,577. Now, as Mr. Mowat justly observed in addressing his constituents :—

'If we had no surplus at all—and no other province in the Dominion has a surplus—I think our mode of employing the funds which have been entrusted to our care has been such as entitles my friends and myself to look for a renewal of the confidence and support of the people. We do not think it a good thing—and it would not be a good thing—to hoard up money in the public treasury. We are, therefore, employing it in ways that are far better and more beneficial to the people than hoarding it in banks would have been.'

And again, in a later speech at Toronto, he said :

'The revenue of the province is far more than sufficient to pay the cost of the great governmental purposes of legislation, civil government and the administration of justice. In fact these—which alone are the essential functions of government—do not take up more than twenty per cent. of our ordinary revenue. What should be done with the balance ? What is the best thing to do with it ? It would be the most absurd policy in the world to reserve the surplus funds which thus come into our hands and deposit them in banks

in order that our posterity may benefit at our expense. The country is growing richer every day. There will be a larger population by and by; and the generation to come will be better able than we are to bear whatever expenses it may be necessary for that generation to incur. And there is another reason why we, who are poorer, should not be hoarding money in order to give it in the form of money to those who will be richer. A wise employment of our money not only benefits ourselves while we are living, but it benefits our posterity more than if we hoarded up the money for them. If we spend money on public works, railways and like useful objects, not only the population of to-day but the population of ten, twenty, a hundred years hence will be the richer and will be benefitted more than if we had hoarded up the money in order that they might spend it in their day.' 1875-6

In spite of the defeat of some valued supporters, such as Mr. W. C. Caldwell of North Lanark, the Hon. Adam Crooks in East Toronto, Mr. Abram Farewell in South Ontario and Mr. Thomas Hodgins in West Elgin,[1] the Government was sustained by a larger majority than they had been able to command in the previous Legislature. The Premier himself was elected by acclamation in North Oxford, the Hon. Archibald McKellar in East Kent, the Hon. Peter Gow in South

[1] Mr. Crooks soon afterwards found a seat in South Oxford, and Mr. Hodgins was declared by the Election Court (June 24, 1875), to have been duly elected for West Elgin.

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Wellington, Mr. A. S. Hardy in South Brant, Mr. J. M. Williams in Hamilton, Mr. James Bonfield in South Renfrew, Lieut.-Col. Clarke in Centre Wellington and Mr. Peter Patterson in West York. Mr. Rykert was defeated in Lincoln by Mr. Neelon, Mr. J. H. Hunter replaced Mr. Lauder in South Grey, Mr. Geo. A. Cox succeeded Mr. Fairbairn in West Peterborough, Mr. William Hargraft defeated Capt. Gifford in West Northumberland and the Hon. William McDougall was an unsuccessful candidate for East York.

The Opposition, however, were heartened by the fact that in the interval between the election and the meeting of the House, Mr. McDougall, upon the death of Mr. D'Arcy Boulton, succeeded in obtaining a seat in South Simcoe.

In those days the Hon. William McDougall loomed large in Canadian politics. His career, though erratic, had been picturesque and not undistinguished. Beginning as one of the founders of the 'Clear Grit' Party—a group of Radicals to whom the constitutional changes advocated by the *Globe* seemed altogether inadequate—he sketched in the *North American*, which he then edited, a series of sweeping reforms, including, among other things, universal suffrage and the application of the elective principle to all public offices, including that of Governor-General. Afterwards his opinions grew more conservative. He joined the editorial staff of the *Globe* and became, for a time, one of Mr. Brown's most devoted and trusted followers. Under the aegis of his patron he was

elected in 1858 for North Oxford, and continued to sit in the Legislative Assembly of Canada until Confederation. He was a member of the Macdonald-Sicotte and of the Macdonald-Dorion Administrations; and when Mr. Brown, in 1864, entered the Coalition Cabinet, he chose Mr. McDougall to be, with Mr. Mowat, one of his two Reform colleagues in the Administration. After the passing of the Confederation Act, Mr. Brown considered the work of the Coalition Cabinet as accomplished, and urged Mr. McDougall's retirement, but he refused to follow his old leader any longer, and during the next three years he served under Sir John A. Macdonald as Minister of Public Works in the first Dominion Parliament. 1875-6

Everybody knows the history of his appointment in 1870 to be the first Lieutenant-Governor of Rupert's Land and the Northwest Territories, and of his unsuccessful attempt to reach Fort Garry; and there may be some who still recollect the terrible arraignment of his colleagues contained in the pamphlet entitled, 'Eight Letters to the Hon. Joseph Howe on the Red River Rebellion, 1870,' which, whatever may be thought of his judgement in writing it, is a specimen of nervous English and trenchant argument.

In 1875 he wrote and published another pamphlet, entitled 'Six Letters to the Hon. Oliver Mowat on the amendments of the Provincial Constitution,' in which he declared that the Redistribution Act of 1874, and the Act of the same Session relative to the northerly and westerly boundaries of On-

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tario, were unconstitutional and *ultra vires* of the Legislature.

This was the man whose advent into the Legislative Assembly was hailed by the Conservative party and press with a grand flourish of trumpets. He was to be a powerful and aggressive leader who would push the battle to the gates,—a constitutional lawyer who would teach the 'Little Premier' some salutary and much-needed lessons as to the true intent and meaning of the British North America Act.

In his addresses to the electors of East York and South Simcoe Mr. McDougall had promised great things. The misdeeds of 'a corrupt and guilty Administration' were to be at last unearthed and exposed. The Court of Chancery, which had become, in his opinion, 'a sink of iniquity,' was to be abolished. The unconstitutional Redistribution Bill of 1874, and the Act of the same Session which provided that the northerly and westerly boundaries of Ontario should be determined by arbitration, were to be repealed, and he promised, if elected, to secure the passing of a Statute to fix the date for the annual meeting of the Legislature. How far these promises were fulfilled will hereafter appear.

During the interval between the general election and the assembling of the House, the Hon. Archibald McKellar, having been appointed Sheriff of Wentworth, resigned the office of Provincial Secretary, and was succeeded by Mr. Samuel Casey Wood, M.P.P. for South Victoria.

THE SESSION OF 1875-6

The first Session of the Third Legislature of Ontario began on November 24, 1875, and lasted, —with a fortnight's intermission over Christmas— until February 8, 1876. The Hon. R. M. Wells was unanimously re-elected Speaker, and the House proceeded at once to the business of a most important and prolific Session. 1875-6

Among the measures introduced by the Attorney-General were a Bill to provide for the payment of Crown witnesses, another introducing the ballot in the voting upon municipal by-laws, another respecting voters' lists, another to amend the law respecting elections and controverted elections by enacting for Ontario the provisions as to corrupt practices contained in the recent English Election Acts relating to parliamentary elections, and providing that, upon the filing of an election petition, security for costs to the amount of $1,000 should be given by the petitioner, and an affidavit filed by him that the petition was presented in good faith, and that he believed and has good reason to believe the statements therein contained to be true. In pursuance of his determination to cut down unnecessary expense in legal proceedings Mr. Mowat also introduced an Act to amend the law of vendor and purchaser, and to simplify and cheapen the investigation of titles. Sureties for public officers were protected by a Limitation Act, providing that no action on their bonds should be brought after ten years, and that a surety for a registrar of deeds, or for the clerk or bailiff of any Division Court, might get rid of his liability

Chap. XI by giving notice in writing to the proper officer. The 'Act respecting County Court Judges' enabled the Lieutenant-Governor to divide the province into County Court Districts, in which the Judges might so divide the business of the County Courts, Courts of General Sessions, Courts for the revision of voters' lists, etc., as best to economize the judicial strength and save the expense of unnecessary sittings.

But the most important Act of the Session was one introduced by the Provincial Treasurer, Mr. Crooks, though both the Attorney-General and Mr. A. S. Hardy had assisted in its preparation. The temperance sentiment of the country had been shown by the introduction during the Session of nearly a hundred petitions, bearing the signatures of more than 22,000 persons, including the official representatives of county, village and township councils, school boards, synods, conferences, temperance societies and other influential bodies, all demanding a more stringent restriction of the liquor traffic. The 'Act to amend the law respecting the sale of fermented or spirituous liquors'—popularly known as the 'Crooks Act'—was the response of the Government to this demand.

In 1850, the power to grant licences for the sale of liquors had been transferred by 13-14 Vict. c. 65, from the provincial Government to the municipal councils; but an experience of twelve years showed that the introduction of this element into the sphere of municipal politics was a mistake.

It exposed the members and officers of these local councils to influences which were in many cases of a most undesirable character, and it tended—especially in urban municipalities—to deteriorate the *morale* and lower the status of these bodies. Accordingly, in 1862, this power was again transferred in cities from the Council to the Board of Police Commissioners, which then consisted of the Mayor, the Recorder and the Police Magistrate. In towns, villages and townships, however, the old state of affairs still existed, and the evils inevitably incident thereto grew with their growth. Successive Acts of Parliament, limiting the number of licences which might be issued in any locality and prescribing new regulations for the control of the traffic were rendered nugatory by the inaction of the municipal authorities and almost wholly failed to accomplish any practical result. The Government now determined to take away from the councils all control over shop, saloon and tavern licences, and to vest the power to grant such licences in Boards of Licence Commissioners to be appointed by the Lieutenant-Governor in Council for each city, county or electoral division in the province. 1875-6

The 'Crooks Act' was a new and bold departure in the direction of governmental control over the liquor traffic. Besides providing for the appointment of Commissioners and Inspectors by the Lieutenant-Governor, it limited the number of licences which might be granted in any municipality to one for each 250 of the first 1,000,

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and one more for each additional 400 of the population of the place, according to the last preceding Dominion census, and it authorized the municipal council by by-law, or the Commissioners by resolution, still further to reduce this statutory limit. It increased the amount payable for a wholesale licence to $150; for a tavern or shop licence in cities to $100; in towns to $80, and in villages and townships to $60; and it authorized the council by by-law still further to increase the duty payable for tavern or shop licences to an amount not exceeding $200. It fixed a certain minimum of accommodation, etc., as a necessary qualification for licensed premises, and the councils were empowered to prescribe further conditions in addition to those specified by the Act : to require the holder of a shop licence to confine the business of his shop to the keeping and selling of liquor, and to impose such other restrictions as they should think fit upon the carrying on of the business.

In moving the second reading of the Bill, Mr. Crooks strongly animadverted upon the apathy displayed by municipal councils and municipal Licence Inspectors in carrying out the duties imposed upon them by the existing law. He said that licences were often granted to places which were discreditable to the localities in which they existed, and that the licensed shops in many towns and villages were largely devoted to tippling and gambling. He referred to an official report, made in the previous year, which stated that only about one-half of the licensed taverns in the city

of Toronto had the accommodation required by law, and that in very few municipalities throughout the country had the councils placed any limit whatever upon the number of licences granted. He thought that as the Government had to deal with disease and crime, it was proper that they should assume the responsibility of dealing with one of the chief causes which produced these results. 1875-6

The Hon. Mr. McDougall felt great mistrust of the Bill. He fancied he saw in it an attempt to take away the authority of the municipal councils so that the Government could secure control of a large amount of patronage which would be influenced by political considerations.

Mr. Meredith doubted the propriety of giving the power of limiting the number of licences—below the maximum fixed by the Act—to an irresponsible body like the Board of Commissioners.

Mr. Creighton approved of the appointment of Inspectors by the Government, so that these officials would be removed from local influences, but he thought the councils should still have the power of issuing licences and fixing the fees payable therefor.

Mr. M. C. Cameron said it was a slander for the Government to charge the municipalities with not acting up to the law. He contended that there would be political favoritism in the appointment of Inspectors, and that the result of the Act would be detrimental to the interests of temperance. He wished to enter his strong pro-

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test against the proposal of the Government to take the power of granting licences out of the hands of the people's representatives.

The Attorney-General, in closing the debate, said that the Legislative Assembly represented the people just as much as any municipal council in the province, and that experience alone could determine how much power should be assigned to each of these representative bodies. If the Government could not be entrusted with the power of granting liquor licences, there was no help for the temperance people. The experience of the past twenty-five years had conclusively shown that a great mistake was made in 1850 when municipal councils were entrusted with the power to grant tavern and shop licences. He knew of one municipality with only 803 inhabitants which had fifteen taverns, while other places with ten times that population had only eight or less. The Government had tried in the past what the municipalities and their inspectors could do, and would, to carry out the law, but the result was most unsatisfactory, and, feeling as they did the immense evils of the present state of affairs, they had brought in a measure which they believed could be carried out. It was not a political move. He felt it to be a grave step and one which would involve the Government in further and serious responsibilities, but he believed also that in the course of three or four years the results would show that in proposing this measure they were acting as lovers of their country and in the best interests of the people.

The Bill was very strenuously resisted by the Opposition. On the third reading Mr. Meredith moved to postpone its operation until March 1, 1877, which was lost on division. Mr. Lauder moved that in cities and separate towns the mayor, and in other municipalities the warden of the county, should be *ex officio* one of the Licence Commissioners, which was defeated by 49 to 31. Eight other amendments relating to minor changes in the Bill, were defeated by majorities ranging from 18 to 34, and an eleventh amendment, moved by Mr. Tooley, was ruled out of order by the Speaker. 1875-6

In this objection to the transfer of control over licences from the municipal councils to the central government, the Opposition chose a line of attack well calculated to appeal to popular prejudice. A few years later this became a plank in the platform of the Conservative party; and at a Convention held in Toronto on September 14, 1882, it was unanimously resolved that, 'in the opinion of this Convention. . . . . the power of issuing licences, and the fees derived therefrom, should be restored to the municipalities.' Mr. Meredith, then the Opposition leader in Ontario, speaking of the resolution, said—as reported by the *Mail*—that:

'He was prepared to say that the present Opposition, if elected to office, would be prepared to wipe away the partisan Commissioners. (Cheers.) He was prepared to restore to the people of the province the rights they had formerly exercised. (Cheers.) He was prepared

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to give back to the municipal councils the rights they had formerly enjoyed.'

But the Act met with the cordial approval of those most interested in the promotion of temperance; and only a few days after Mr. Meredith's speech at the Toronto Convention, the Methodist General Conference, then in session at Hamilton, passed a resolution in the following words :—

'Although we cannot accept as absolutely righteous any licence law, yet, if we must tolerate one as the tentative regulator of an evil till we can have it wholly removed, we must regard the 'Crooks Act' as the best instrument for the suppression of intemperance which the Province of Ontario has ever had. We would emphatically deprecate any legislation tending to impair its efficiency, and we respectfully recommend our people, where this law obtains, to use their voice and franchise to prevent the control of the licence system from reverting to the municipalities, where the industrious ward politician and the interested liquor dealer so largely manipulate the elections.'

But an even more formidable objection was soon afterwards raised to the 'Crooks Act' on the ground that it was unconstitutional. It was claimed by the Conservative press—and Sir John Macdonald (as will hereafter appear) declared it to be his opinion—that the Act was *ultra vires* of the provincial Legislature. This point was raised in proceedings instituted by one Hodge, an hotelkeeper of the city of Toronto, to quash a con-

viction recorded against him by the Police Magistrate for breach of certain regulations made by Licence Commissioners appointed under the 'Crooks Act.' 1875-6

Upon the argument of Hodge's case before the Court of Queen's Bench it was contended that the 'Crooks Act' was *ultra vires* of the Legislature of Ontario as relating to the subject of 'trade and commerce,' which the B. N. A. Act had placed exclusively within the legislative jurisdiction of the Dominion; and, secondly, that, even if the local Legislature had authority to regulate as well as to license the liquor traffic, it could not delegate that authority to any other body. The Court, consisting of Chief Justice Hagarty and Justices Armour and Cameron, held the conviction bad on the second ground, but declined to express any opinion as to the constitutionality of the Act.[1] The Court of Appeal, however, reversed this decision, holding that the Act was valid, that the provincial Parliament, having undoubted authority to deal with the granting of licences, and the regulation and control of licensed places, had power also to delegate to subordinate bodies, such as Boards of Licence Commissioners, any powers necessary to the carrying out of its legislation in this respect. Chief Justice Spragge expressed the opinion that the case was clearly within clause 8 of the 92nd section of the B. N. A. Act, which gives exclusive power to provincial Legislatures to make laws in relation to 'municipal institutions,'

[1] 46 U.C.R. 144 (1881).

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and that this must be read in connection with clause 9, which gives similar power in relation to 'shop, saloon, tavern and other licences.'[1]

From this decision Hodge appealed to the Judicial Committee of the Privy Council, where the judgement of the Ontario Court of Appeal was unanimously affirmed. The question before their Lordships was so important, and their decision is so clearly and fully expressed that it has been ever since regarded as a sort of charter of provincial rights. The following extract will give an idea of its tenor :—

'Their Lordships consider that the powers intended to be conferred by the Act in question [the 'Crooks Act'], when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, etc., licensed for the sale of liquors by retail, and such as are calculated to preserve, in the municipality, peace and public decency, and to repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce, which belongs to the Dominion Parliament, and they do not conflict with the provisions of the Canada Temperance Act. . . . . Their Lordships are, therefore, of opinion that as regards sections 4 and 5 of the Act in question[2] the Legislature of Ontario

[1] 7 Ont. App. Rep. 246 (1882).

[2] These are the sections relating to Licence Commissioners and their powers.

acted within the powers conferred upon it by the British North America Act. . . . Assuming that the local Legislature had power to legislate to the full extent of the resolutions passed by the Licence Commissioners, and to have enforced the observance of their enactments by penalties and imprisonment, it was further contended that the Imperial Parliament had conferred no authority on the local Legislature to delegate these powers to the Licence Commissioners or any other persons. In other words, that the powers conferred by the Imperial Parliament on the local Legislatures should be exercised in full by that body, and by that body alone, and the maxim *delegatus non potest delegare* was relied on. 1875-83

'It appears to their Lordships that this objection is founded upon an entire misconception of the true character and position of the provincial Legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province, and for provincial purposes in relation to the matters enumerated in sec. 92 [of the Act], it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample—within the limits prescribed by sec. 92—as the Imperial Parliament in the plenitude

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of its power possessed and could bestow. Within these limits of subjects and area the local Legislature is supreme, and it has the same authority as the Imperial Parliament, or the Parliament of the Dominion would have had, under like circumstances to confide to a municipal institution, or a body of its own creation, authority to make by-laws or resolutions as the subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.'[1]

The 'Crooks Act' has been several times amended, always in the direction of making its provisions more stringent and increasing the fees payable for licences. The more important of these amendments, viz.: those made in 1885 and 1890, will be noted in the record of those Sessions.

The effect of the new legislation was immediate and remarkable. In 1875, the year before the 'Crooks Act' came into force, the number of tavern and shop licences issued in Ontario was 5,716; in 1876 it fell to 3,714, an immediate reduction of 2,002, or more than 35 per cent.; and, in spite of the increase in our population since then, the number of licensed places has gone on decreasing until in 1903 only 2,899 licences of all kinds were issued. In other words, while the population of Ontario has increased nearly one-third, the number of licences is now only half what it was in 1875.

The Hon. G. W. Ross, in his speech introducing the Liquor Bill of 1902, gave some interesting

[1] 9 App. Cas. 117 (1883).

statistics. 'In 1875 one licence was issued to every 278 persons in the province; in 1901 the average was one licence for every 700 persons. In Michigan, just across the border, there is one licence for each 239 of the population, and in New York one for each 134 . . . . We have in Ontario 756 organized municipalities. In 141 of these—that is in nearly 20 per cent. of the municipalities—no tavern licences at all are issued; in 435 not more than two licences, and in 625 not a single shop licence.' 1875-6

Nor, even from a purely financial point of view, to say nothing of higher considerations, have the municipalities been detrimentally affected by the temperance legislation of the Liberal party. In the first year after the passing of the 'Crooks Act' (1876-77) they received from the Government, as their proportion of the fees on 3,714 licences, the sum of $139,568, whereas for the same number of licences under the former law they would have received but $104,740; and in 1903-4 the amount paid to the municipalities in respect of 2,877 tavern and shop licences was $257,866.64, an increase over 1876 of more than 86 per cent. Results such as these show that abortive attempts at impossible prohibition are practically less successful than a steady course of restrictive legislation; and leaving out of view for the moment, moral considerations of infinitely more importance, the policy of the Mowat Government, if the question of revenue were alone to be considered, has for the past thirty years commended itself to the

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sober common sense of the majority of our people of both political parties.

Another important measure of this Session was 'An Act respecting the Legislative Assembly,' which provided that the House should have power to compel by warrant of its Speaker the attendance of witnesses and the production of papers; protected the members and officers of the Assembly from arrest on civil process during any Session, and for twenty days before and after such Session; prohibited any member of the House from receiving, directly or indirectly, any fee or reward for drafting, advising upon, promoting or opposing any Bill, resolution or other matter submitted or intended to be submitted to the House, or any committee thereof, and any barrister, solicitor or attorney being the professional partner of a member from accepting any such fee or reward, under a penalty of $500 over and above the amount of the fee; declared that if judgement be recovered against any member of the Legislative Assembly for any penalty under the preceding sections, or if the House by resolution determine that a member had been guilty of the prohibited Act, his election should be void and he should be incapable of re-election during the term of the existing Legislature. The Act further conferred upon the House the rights and privileges of a Court of Record for the purpose of inquiring into and punishing, as breaches of privilege, assaults, insults, libels or threats to or upon members of the House, the offering to, or acceptance of, a bribe by any member, interfer-

ence with officers of the Legislature while in the execution of their duty, tampering with witnesses, giving false evidence, or refusing to give evidence or produce papers before the Assembly or any committee thereof, and other like matters. 1875-6

In connection with the passing of this Statute an incident occurred which illustrates the generous, and even chivalrous, manner in which the Premier treated his political opponents, and the confidence which they felt in him. Dr. Mostyn, the Conservative member for North Lanark, who had been elected by a majority of twenty-six over W. C. Caldwell, a Government supporter, discovered about the middle of the Session that, having been a coroner at the time of his election, he was disqualified under 'The Independence of Parliament Act,' passed by Mr. Sandfield Macdonald in 1868-9, and that by sitting and voting during the Session he had rendered himself liable to a penalty of $2,000 per day. He thereupon, after consultation with his leader, the Hon. M. C. Cameron, came to the Attorney-General and frankly laid the case before him, asking his advice and assistance. Mr. Mowat's reply, as related to me by one who was present, was that he understood the election to have been fairly and honestly conducted on both sides, and he thought the electors of North Lanark were entitled to be represented by their chosen member. He would not be disposed to take advantage of a technicality in the law in order to unseat an opponent who had inadvertently made himself liable to penalties, and would there-

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fore advise his colleagues to insert in the Act then before the House a clause confirming Dr. Mostyn in his right to the seat and protecting him from an action for penalties. This he accordingly did by adding to the Bill a section, providing that 'No election which has taken place before the passing of this Act shall be void by reason of anything contained in the Act to secure the Independence of the Legislative Assembly, passed in 1869, and no person heretofore elected a member of the Legislative Assembly shall be subject to the penalty mentioned in the fifth section of the said Act, provided there is no pending election petition or action for such penalty.'

The Opposition moved several amendments to the Bill, and on most of these Dr. Mostyn voted with his party against the Government. It was thought by those who knew the circumstances, that, after these adverse votes, Mr. Mowat would drop the clause which he had inserted especially for Dr. Mostyn's protection; but, on the contrary, he pressed and secured its passage through the House. It was some time before the facts became known; and then the information came, not from Mr. Mowat himself but from Dr. Mostyn, who, in common with many of his political friends, henceforward regarded the Attorney-General with the most kindly feelings.

Additional point is given to the incident by the fact that, under precisely similar circumstances in 1869, Mr. Sandfield Macdonald, having discovered that the Liberal member for South On-

tario had not resigned his office as a coroner before his election to the House, compelled him to choose between supporting the Government or being disqualified and exposed to an action for penalties. 1875-6

A great and beneficial reform was effected by the Act which substituted for the Council of Public Instruction a Department of Education, consisting of the Executive Council or a Committee thereof, and vested the functions and duties of the Chief Superintendent of Education in a member of the Cabinet to be called the 'Minister of Education.' Shortly after Confederation this change had been suggested by the founder of the school system of Upper Canada (Rev. Dr. Egerton Ryerson). In a letter to Mr. Sandfield Macdonald in 1869, Dr. Ryerson advised that the Department of Education should be placed upon the same footing as the Public Works Department, the Crown Lands Department and the Department having charge of the executive administration of the law. According to his biographer, the Rev. Chancellor Burwash, 'He proposed that the educational system of the province should be unified from the provincial university to the elementary school, under the control of a Minister of the Crown. . . . Upon his voluntary retirement in 1876 this proposal was carried into effect, and it has powerfully influenced the history of education in Ontario for the past twenty-five years. The political danger has not seemed to be important. The appointing power is so diffused among municipal and local bodies that there has scarcely ever been room for criticism,

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even by the most suspicious, and the few appointments to the central office have been very judiciously made."[1]

On the second reading of the Bill the Hon. William McDougall, who was acting as leader of the Opposition, strenuously objected to the proposed change. He considered that the success of the educational system of the province had been chiefly due to its freedom from political influence. The whole policy of the Government seemed to be to concentrate power in their own hands. The management of education by the Government, he said, had been tried in England, where it was found to be a failure, and there was no country in the world where the great mass of the people were so densely ignorant. He moved an amendment, reciting these views and declaring that in the opinion of the House the Bill ought not to become law. The Attorney-General said in reply that he had hoped the House would discuss this measure independently of all political considerations. The Bill was not an elaborate one, and its provisions had long been discussed and understood throughout the country. We could not have expected long to retain the services of the venerable Chief Superintendent of Education, and he had therefore acceded, though with very great reluctance, to that gentleman's desire to retire. Instead of this being a measure under which the Government was grasping too much power, one of his principal

[1] *Egerton Ryerson, D.D.*, by the Rev. N. Burwash, S. T. D., LL.D., pp. 212, 213.

objections to it had been that it would always be a source of weakness to a Government. The change would remove an anomaly long felt to be out of accord with the spirit of our constitution. Hitherto the Chief Superintendent had been virtually a Minister without a Minister's responsibility, and if responsibility was essential to all the other Departments of the Government, it was surely essential to the Department of Education. Every analogy and every precedent was in favour of the change. He defended the present Council of Public Instruction, but the appointment of a Minister of Education involved of necessity the other change, viz.: that the Executive Council should take the place of the Council of Public Instruction. Even under the existing law the Government was responsible in many respects for the acts of the Council of Public Instruction, although they had little or no control over that body. He did not think there was much force in the objection that every new Minister of Education might think fit to drag new and untried theories into educational affairs, for in all the Government departments a change of Ministers seldom involved sudden changes in policy. He hoped and believed that any party that might happen to be in power would avoid giving a political complexion to educational matters, and he, for one, would endeavour to show such an example. 1875-6

Mr. McDougall's amendment was defeated by 45 to 25, and the Bill was read a second and third time without further division.

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Mr. McDougall's gloomy anticipations as to the political effects which would follow from the appointment of a Minister of Education have never been realized, as witness the testimony of Chancellor Burwash, above quoted, and also that of many other prominent educationists in the province.

Speaking of the Act some years afterwards at a public meeting in Toronto, Mr. Mowat said:—

'In 1876, on the recommendation of the Rev. Dr. Ryerson and others interested in the work of education, we took the responsibility of appointing a Minister of Education, who was to be a member of the Executive Council. All the proceedings of the Department are now subject to the approval of the House, where any regulation which appears not to be in the public interest may be challenged and discussed, and the Minister of Education must defend whatever he does or omits to do in regard to school matters. As our first Minister of Education, we selected a gentleman of distinguished ability and of high moral character; one in every way fitted to be the head of the educational system of the country. The Hon. Adam Crooks was a graduate of the provincial university and its Vice-Chancellor. He had taken high honours in his university course, and his administration of the Department received unstinted public approbation. It gave satisfaction not to his own party only, but to all parties. Under his advice the Government of the provincial uni-

versity was popularized by giving to its graduates a voice in its management. The laws relative to our high and public schools were extensively revised, and training and model schools were established in almost every county. There were not wanting at the time those who predicted that, by the change we made, the school system of Ontario would be brought under political influence and managed for political objects; but it is now universally admitted that these fears were groundless.' 1876

The 'Act to secure uniform conditions in policies of fire insurance,' set out in a schedule certain statutory conditions which were to form part of every fire insurance policy, and declared that these should be printed in the policy, and that if the insurance company desired to vary the set conditions, or to omit any of them, or to add new conditions :—

'There shall be added in conspicuous type and in ink of a different colour, words to the following effect :

"This policy is issued on the above statutory conditions, with the following variations and additions :

"These variations are, by virtue of the Ontario Statute in that behalf, to be enforced so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable."'

The validity of the Act—in so far as it assumed to impose its conditions upon insurance companies

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operating under charters not granted by the province—was contested in the cases of *Parsons* v. *The Citizens' Insurance Co.*, and *Parsons* v. *The Queen's Insurance Co.*, which, after having passed through all our Canadian Courts—Queen's Bench, Common Pleas, Court of Appeal and Supreme Court—were finally decided by the Judicial Committee of the Privy Council in favour of the plaintiff. The Act was held valid as within the provincial power to legislate with regard to 'property and civil rights within the province' and was declared to be 'applicable to the contracts of all insurers in Ontario, including companies and corporations, whatever may be their origin, and whether incorporated by British, foreign or colonial authority.'

Thus Mr. Mowat scored his third victory for provincial rights.

The Hon. William McDougall, whose advent had been hailed with so much enthusiasm and from whom such great things had been expected, turned out to be a complete failure. He did not succeed in ousting the Hon. M. C. Cameron from the leadership of the Opposition, or even in supplanting Mr. Meredith as its deputy leader. Of the five measures which he had pledged himself to introduce only three were brought before the Legislature. His threatened Bill for the abolition of the Court of Chancery was never presented; nor did he venture to assert in the House the unconstitutionality of the Redistribution Bill of 1874, or to attempt its repeal or even its amend-

ment. He did, indeed, bring in a Bill providing 1875-6
that the regular annual meeting of the Legislature should always be held on the first Wednesday in November, but Mr. C. F. Fraser at once objected to this as unconstitutional, since the right to summon the Legislature was vested in the Queen's representative, and by section 92 of the B. N. A. Act the House had no power to interfere with it. Mr. Fraser pointed out that a similar question had come up in the Legislature of old Canada in 1850 and 1851, and had been decided by the Speaker, the Hon. Mr. Sicotte, adversely to Mr. McDougall's contention : that the question had been raised on other occasions, and that four Attorneys-General—the Hon. Robert Baldwin, the Hon. W. B. Richards, Sir John A. Macdonald and Mr. John Sandfield Macdonald—had given their opinions as to the unconstitutionality of such an attempt. He contended that the House had no more right to say when it should meet than to determine when it should be prorogued or dissolved. Mr. Hodgins (West Elgin) took a similar view, and cited many parliamentary precedents. Mr. McDougall replied but feebly. He was unable to quote a single precedent, or to answer the arguments founded upon the British North America Act. The Speaker said he had looked carefully into the matter when the Bill was first introduced, and before he knew that the point of order would be raised. He had no doubt whatever that the Bill was unconstitutional, and he accordingly ruled it out of order. Thus

Chap. XI the gentleman who had been instructing the Attorney-General as to the principles of the provincial constitution, found himself, at the first onset, in a position which would have been humiliating even to a tyro in parliamentary law.

His next attempt was scarcely more successful. It was not until February 4, six days before the House adjourned, that he introduced a Bill to repeal the Boundary Act of 1874. Five days afterwards he withdrew it, in view of the ruling given by the Speaker in regard to the measure just mentioned.

On January 20 Mr. McDougall moved, seconded by Mr. Lauder, for a select committee to inquire into the administration of the Crown Lands Department, for the past five years. He was unable, he said, as yet to cite any specific instance of mal-administration: whereupon it was moved by Mr. Sinclair, in amendment, that 'a roving commission to inquire into the many thousands of decisions and transactions of the Crown Lands Department for five years is unprecedented in British or Canadian constitutional government'; and in further amendment by Mr. Mackenzie, that 'in the opinion of this House it is expedient to grant a committee for such a general investigation, though the House would be willing to grant such committee whenever any definite charge of mal-administration in the Crown Lands Department, or any other department of the public service, is made in the usual form.' The amendment to

the amendment was carried by a vote of 50 to 12, several prominent members of the Opposition voting with the Government, while others were conspicuous by their absence from the division. Indeed, as the *Globe* remarked, in its review of the legislation of the Session:— 1876

'It is, in fact, no secret that with respect to this much-heralded acquisition to their party, the feeling among Conservatives has been one of extreme disappointment and mortification. Neither skill, tact, nor ordinary information on the part of Mr. McDougall, has redeemed in any particular the want of strength on the Opposition benches. . . . Every opportunity has been lost through negligent or incompetent leadership. Mr. Cameron himself has, as usual, shown more fondness for briefs than for politics, and has thus contributed by his irregular attendance to the general demoralization of the Opposition.'

During the Session of 1875-6 there were 31 divisions of a strictly party character, and in them the average majority of the Government was 22, or one-fourth of the entire House.

A letter written by Mr. Mowat a few weeks after the close of the Session recalls an ecclesiastical trial which created a great sensation at the time. The Rev. D. J. Macdonnell, minister of St. Andrew's Church, Toronto, had preached a sermon, in which he ventured to express doubts as to the eternal duration of the future punishment of the wicked. For this he was taken to task, first by the Presbytery and afterwards by the

Chap. XI General Assembly of the Presbyterian Church. Probably no clergyman in Canada was more admired and beloved than Mr. Macdonnell, even by those who were not members of his own communion: and to a staunch and liberal Presbyterian like Mr. Mowat, the result of this trial was a matter of keen interest and much anxiety. He writes to his brother John :—

'April 15, 1876.

'I should be glad if you were purposing to attend the Synod as well as the General Assembly —partly for the pleasure of having you with us, and partly in case you could help to smooth matters in Mr. Macdonnell's case. I understand from Dr. Topp that the committee are not likely to report favourably. It does seem to me that the mere fact of a minister having doubts in regard to any particular doctrine ought not to affect his ministerial standing, provided he does not preach these doubts. Mr. Macdonnell was certainly wrong in preaching them; but it is quite evident that he has no intention of repeating that error, and it would be a very great loss indeed to the Church if such a view were taken of his course as would render it necessary for him to retire from the work. In a short conversation which I had with Dr. Topp, he mentioned that he himself had had doubts on important points in his early ministerial days, though he had these doubts no longer. I apprehend that many other ministers had or have like doubts,

though they regret them and do not think it their duty to proclaim them.' 1876

Apparently the letter was not without its effect, for those who heard Dr. Mowat's speech in the General Assembly, in defence of Mr. Macdonnell, are not likely to forget it. The *Westminster* in its report of Dr. Mowat's jubilee (April 30, 1900), said : 'That he should have spoken at all surprised some, and that he should, strictly within the amenities of debate, have hit so hard, surprised others. Many, of whom the writer was one, approved every word. Its historical standpoint, its candour and truthfulness were unassailable, and twenty-four years have more than amply vindicated the spirit and sagacity of the speech.'

The next Session of the Legislature began on January 3, and lasted until March 2, 1877.

In opening the House the Lieutenant-Governor was pleased to say :—

'I rejoice to announce that the learned Commissioners for the consolidation of the Statutes have completed their important and laborious undertaking, and that the result is ready to be submitted to you. I hope that it will be found practicable to give the people of the province at your present Session the benefit of this work, with such amendments as your wisdom may suggest or approve.'

The consideration of the draft Revised Statutes, and of the amendments proposed by the Commissioners to the existing law, occupied the

Chap. XI attention of the House for some weeks. These amendments, together with the remaining legislation of the Session, were afterwards incorporated into the draft submitted by the Commissioners, and the whole work having been completed and submitted to the Lieutenant-Governor on November 20, was brought into force by his proclamation as and from December 31 under the name of 'The Revised Statutes, 1877.'

Speaking at Woodstock in December, 1878, of this great work, Mr. Mowat said :—

'When we took office the statute law of the province was in a state of chaos. It was many years since it had been consolidated, and, since then, annual volumes of Statutes had been making their appearance. These repealed some portions of the law as it stood in 1859—when the last consolidation took place—and altered and amended others. Dead law had necessarily become mixed up with living law in every volume; and no volume, except the last of the series, showed, or could show, which or what part of the enactments contained in it were still in force. If you wanted to know what the statute law was on any subject you had to consult more than twenty indexes and twenty volumes before you could be reasonably sure what the law was; and it was with fear and trembling that even a lawyer gave his opinion on any statute with which he did not happen to be familiar, lest there should be somewhere an enactment having some bearing on the matter in hand and which might have

escaped his attention. Now it has been said by jurists that the form of the law and the facility for ascertaining what it is, are quite as important as the law itself. Then again, in the Consolidated Statutes of Canada and Upper Canada, and in the subsequent volumes up to Confederation, there were many laws not now within the jurisdiction of the provincial Legislature, and these were necessarily and hopelessly intermingled with laws which we had no power to amend or to repeal. 1877

'To provide a remedy for this state of things, we appointed a Commission (of which I was myself a member) for the purpose of assisting in the consolidation and revision of our whole statute law, striking out everything that was dead, and everything that was found to be beyond provincial jurisdiction; collecting the scattered enactments upon every subject, and fusing them into one chapter; classifying the Acts thus consolidated; arranging them in the most convenient way for easy reference; and providing one index for the whole, instead of the twenty or more indexes appended to the existing volumes. One of the absurd charges made against us is, that we employed a Commission for the purpose of doing—or assisting in doing—this work. There never yet was an important consolidation or revision of the laws of any country that was not done by a Commission; and it is impossible to execute work of this kind otherwise than by a Commission. I may say further that there

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never was a Commission for revising the statute law of any state or country which, in view of the extent of the work, cost nearly as little as our Commission cost.[1] The work, too, I may add, was done as well as the work of the best paid Commissioners that had ever similar work to do in any country I know of. In the course of it the whole body of the statute law of Ontario underwent legislative revision as well as consolidation. Upwards of 2,400 Statutes had to be examined, compared, arranged and indexed, and these were ultimately reduced by consolidation to two hundred and twenty-four. And so we disposed of this very important matter, and the people are in possession of the results of our work.'

The extension of the municipal franchise became, during this Session, the subject of an interesting debate, which shows very clearly Mr. Mowat's views as to municipal government in Ontario.

Mr. Bethune introduced a Bill providing that every freeholder, qualified under the existing law to vote at municipal elections in cities and towns, should be entitled, according to the assessed value of his real property, to an additional vote, or votes, according to the following scale :—On an assessment from one thousand to two thousand dollars,

[1] The Attorney-General and the Judges who acted as the Commissioners received no remuneration for their services. The three junior Commissioners —Messrs. Langton, Biggar and Kingsford—were paid at the rate of $100 a month, and the entire cost of the work was less than $10,000. The Commissioners who prepared the Consolidated Statutes of 1859 had received $31,914; and the Revised Statutes of Canada (1886) cost $46,239, exclusive of printing and distribution—nearly five times as much as Mr. Mowat's Consolidation of 1877.

one additional vote; for each additional thousand dollars of assessment up to five thousand dollars, one additional vote; from five thousand to ten thousand dollars, five; from ten thousand to twenty thousand dollars, six; and for an assessment exceeding twenty thousand dollars, seven additional votes, or eight in all. In moving the second reading he said :— 1877

'Real estate is the only basis upon which the municipal franchise is now conferred. The reason is probably the shifting ownership of personal property. The universal experience in the United States has been that civic government is a failure, owing to prevalent corruption; and the same thing is true—though to a less extent—of some cities and towns in Canada. Several remedies have been proposed; one of them I have embodied in this Bill. I have had a careful examination made of the assessments in the city of Toronto: and the result shows that municipal affairs are very largely controlled by household votes. In St. Andrew's Ward the tenants are 1,224; the freehold voters 842, and the income voters 58. By this Bill, that proportion would be changed to about 2,000 votes given by owners, and 1,224 by householders. In every ward of the city, the large majority of the voters are the small taxpayers. Our whole system of municipal representation is lame, defective and illogical.'

He referred to a mass meeting of working-men recently held with regard to this Bill, and said

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that it was the best reason in the world for its adoption. It was a common thing for appeals for support to be made on the cry that one workingman should help another; and the result was that many of the best men in the community—those who had the largest interests in the municipality—were altogether shut out from their proper share in the management of its affairs. Under the present system it was made an object with those who held household votes to create deficits from year to year, as had been done in Toronto; the result being either that the obligations were repudiated, or that the city had to borrow money to pay its current expenditure and throw the burden in the long run upon the property holders. He referred to the almost universal dissatisfaction with the way in which municipal works were carried out, and attributed this to the fact that civic authorities were impotent in the presence of contractors, who influenced the numerous votes of those they employed. It had been said that this was to all intents and purposes a Tory measure, but he contended that it had now become a necessity, considering the large sums expended by municipal councils. He held that a voter's power should be commensurate with his means, and that representation according to taxation should be adopted as a principle. He adduced, in support of his views, the case of the town of Stratford, where he said that of 1,500 ratepayers paying $35,000, the class paying under the limit of $25,000 swamped the entire power

of the rest. The evil was not so great in the country, but it was notorious in cities and towns. It was no new idea that he sought to introduce; it had already been adopted in Australia and elsewhere. He could not be called an aristocrat, having come from the people; and, in introducing this matter, he desired only to prevent one class from domineering over the other. He thought that all measures having reference to the repression of vice would be much better carried into effect by taking away the administration of them from the municipal authorities and concentrating it in the central government. 1877

The Attorney-General said, in reply :—

'I fully admit the importance of this subject and the desirability of having it discussed. There are, doubtless, evils in our municipal system, but I fail to see that this Bill touches an evil or provides a remedy. In my own experience, class has not been found arrayed against class. The cases are exceptional in which the poor are not divided, as well as the rich; and when I was a member of the city council of Toronto, I never knew an alderman or councillor who did not owe his election as much to those who, under the system suggested by my honourable friend, would have a plurality of votes as to those who would still have only a single vote. It is generally more easy for the rich man to pay a large amount of taxes than it is for the poor man to pay his small amount; and the poor have, therefore, a stronger motive than the rich for municipal economy.

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Again, the greater part of our municipal legislation relates to matters which affect the poor quite as much as the rich. Take for example, the matter of drainage and sanitation, which so vitally concerns the health of the poor and their children. A large portion of our municipal expenditure affects not only property, but persons. For instance, the police and fire services are quite as important for the poor as for the rich. Again, all matters of legislation affecting morals must be of equal importance to every class of the community. Does any one's experience show that the poor have favoured municipal extravagance ? According to my own, the reverse is the case. Is any one prepared to say that better government would prevail if greater power were given to the rich ? I, at least, am not so sure. It seems to me that the best, if not the only method of securing improvement in the character of our municipal representation is by increasing the intelligence of the people : in other words, by increasing the efficiency of our schools. Even as it is, we have not found that men of wealth and intelligence are rejected by the people when they ask for their suffrages. The analogy attempted to be drawn from the case of joint stock companies has no point, because they deal with property alone. Equal voting has not prevented men from accumulating wealth. On the contrary, all the wealth that has been accumulated was obtained under the present system. For these reasons, I think the

measure introduced by my honourable friend should not become law, and I would suggest to him the advisability of withdrawing it.' 1877

To this Mr. Bethune agreed, and the Bill was accordingly withdrawn.

Immediately after the close of this Session the Hon. Adam Crooks, who, since his appointment as Minister of Education, had administered the affairs of that Department as well as the Provincial Treasurership, resigned the latter office, which was given to the Provincial Secretary, the Hon. S. C. Wood. Mr. A. S. Hardy, Q.C., (South Brant) was chosen as Mr. Wood's successor, and held the Secretaryship until 1889, when, upon the resignation of the Hon. T. B. Pardee, he became Commissioner of Crown Lands: an office which he retained until July, 1896, when he succeeded Sir Oliver Mowat as Attorney-General and Premier of Ontario.

In June, 1877, the Hon. Edward Blake resigned the office of Minister of Justice in the Dominion Cabinet, and the Premier, the Hon. Alexander Mackenzie, offered the vacant place to Mr. Mowat.[1]

[1] Messrs. Buckingham and Ross, in their *Life of the Hon. Mr. Mackenzie* (p. 463), say: 'The legislation with which the House of Commons has to deal follows in the main English precedent; and a lawyer trained in a province where English law is enforced, is, *caeteris paribus*, better qualified to discharge the duties of Minister of Justice than lawyers who are accustomed only to the French Code which prevails in Quebec. Mr. Mackenzie had been very fortunate in obtaining the services of such distinguished men as Messrs. Dorion and Fournier, whose general knowledge of law went far beyond the range of the Courts in which they generally practised; but Mr. Mackenzie felt that it would strengthen his Cabinet if he could obtain from the province of Ontario a man of political experience, whose legal training would command the confidence of the country.'

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The offer was no doubt a tempting one, but Mr. Mowat declined it, saying in his letter to Mr. Mackenzie:—

'I still think that I should not consider the question of leaving the local House, at least until after our general elections. Should you then propose it to me, it would be my duty to weigh well the considerations, political and personal, which might then bear upon such a change as you suggest. If a decision before our local election should be necessary, my present impression is that I ought to remain where I am, in order to perform my part in securing for this province a good Reform majority for another term.'

Among the seventy-five Acts passed during the Session of 1878 (January 9 to March 7), five Government measures deserve to be noted.

The first—introduced by the Attorney-General—was entitled 'An Act respecting the Magistracy.' It provided that every Superior Court Judge should be *ex officio* a Justice of the Peace, and that no action or suit should be brought against any Justice of the Peace for anything done by him under the authority of an *ultra vires* Dominion or provincial Statute, where the action would not have lain against him if the Statute had been within the legislative jurisdiction of the Parliament or Legislature which enacted it; that in quashing any summary conviction the Court or Judge might prescribe as a condition of his order that no action of trespass should be brought against the con-

victing justice; and the Act further authorized the temporary appointment of Police Magistrates in any county or part of a county in order to the better enforcement of the Canada Temperance Act. The Bill as a whole—especially the clause last referred to—met with a good deal of factious opposition, and on the second reading the Hon. William McDougall moved that 'in the opinion of this House it is inexpedient to authorize the appointment of Police Magistrates for the purpose of enforcing any special law,' which was defeated by 43 to 31. 1877-8

The second—'An Act to give finality to voters' lists in parliamentary elections'—was unsuccessfully objected to by Mr. Meredith, and carried by a vote of 44 to 27.

The third was entitled 'An Act for the winding up of joint stock companies.' In introducing it, Mr. Mowat said :—

'The Bill is partly founded upon the law as it now exists in England; but it has been largely altered and adapted to suit our legal circumstances. Its general object is to afford to these companies the means of winding up by their own act. It frequently happens that a company, though not actually insolvent, may be no longer in a condition to carry on business, and that there are rights to be settled and disposed of among the shareholders which render difficult the winding up of its affairs under the present law. This Bill is intended to obviate these difficulties.'

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The measure had been very carefully thought out during the recess, and it passed rapidly through all its stages in the House without any amendment or division.

The fourth—entitled 'An Act to preserve the Forests from destruction by Fire'—authorized the Lieutenant-Governor to declare certain portions of the province containing valuable pine timber to be 'fire districts,' and prescribed certain regulations as to the setting out of fires and the driving of locomotive engines, etc., within these areas. Breaches of the regulations were made punishable by fine and imprisonment, and every Crown Lands Agent, Woods and Forests Agent, Free Grant Agent and Bush Ranger in the employ of the Government was specially charged with the duty of enforcing the provisions of the Act and prosecuting persons or companies guilty of a breach of its requirements.

The Tile Drainage Debenture Act marked a change from the policy of the Sandfield Macdonald Government as to the drainage of swamp and wet lands. Prior to 1872, municipal drainage works had been executed by the provincial Government, the amount expended being made a lien or rent-charge upon the land thus improved. The Mowat Government, shortly after its formation, altered this system, and adopted the more convenient and economical course of allowing the municipalities themselves to execute such drainage works as was necessary, issuing for their cost municipal debentures which the province

was to purchase. The Bill of this Session confirmed these arrangements, and extended them to tile drainage works constructed by private proprietors under municipal supervision. Under the old method some 250,000 acres had been drained at an expense of $365,000; under the new arrangement an equal area was drained within two years after the passing of this Act at a less expense, thus adding 500,000 acres, or nearly 800 square miles, to the cultivable area of the province. 1878

In this Session Mr. Bethune again introduced his Bill to allow cumulative voting at municipal elections in cities and towns; but, in view of the objection of the Attorney-General and the general consensus of opinion in the House, he never moved its second reading. His Bill to dispense with unanimity in the verdicts of juries was equally unsuccessful. During the discussion, Mr. Mowat spoke in opposition to the proposed measure, in language which illustrates that conservative habit of mind to which I have elsewhere referred, and shows also an attachment to the system of trial by jury which is said to be rare among Chancery lawyers. He admitted that there was much to be said in favour of the Bill, but the reasons given in support of it were entirely theoretical, and should therefore be regarded with great caution. It would be a great innovation; and, in his opinion, there was really no practical grievance to be remedied by the change. He had a great respect for old institutions, and unless there were

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tried by a Judge and what by a jury. At the time these Acts were passed, viz.: in 1873 and 1874, the House had sufficient confidence in the Judges to leave the matter in their hands, and the experience of the law for over five years showed that they were exercising wisely the discretion thus entrusted to them. The experiment deserved a longer trial than it had yet received, and he trusted that his honourable friend would not press his attempt to interfere with it. 1878

The Hon. M. C. Cameron was afraid that he was about to express views on this point so thoroughly in accord with those of the Attorney-General that it might possibly lead to the defeat of the Government. (Laughter.) He did not believe that any change should be made in the jury system. It was quite possible, and in some cases it was probable, that the one dissenting juryman might be right and the remaining eleven wrong. At times he has had to complain that Judges, in summing up, directed juries too strongly on questions of fact, instead of being content simply to lay down the law. In such a case the verdict of the jury, if in accordance with the bias of the Judge, would be the verdict of the Judge. Sometimes, again, juries were too much inclined to give verdicts against corporations, and in such cases unanimity was a safeguard. He agreed with the Provincial Secretary (Hon. Mr. Hardy), that special juries were more apt to disagree than common juries. Perhaps this was to be accounted for on the ground that learned men were more

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apt to theorize than to deal with matters of fact. He thought that the arguments of the honourable member for West Huron (Mr. A. M. Ross)[1] in support of the Bill were rather in favour of the position taken by those who opposed it. It did not speak much for our educational system to say that, as time progressed, the quality of jurors deteriorated.

The motion for the second reading of the Bill was defeated by 42 to 27.

Early in the Session Mr. Mowat moved that it be an order of the House that the business of each day shall commence with prayers; that a special committee be appointed to consider and report upon a form of prayer, and upon the arrangements to be made with regard to its use. He said he would ask one of his honourable friends on the other side of the House to second the motion. It seemed to him a fitting thing that in a House like this, representing Christian people of all political parties, its members should manifest in that way their dependence upon the King of kings, and ask for His blessing and guidance before they commenced their daily deliberations. There might be some question among Christians as to the particular occasions on which public prayers should be offered, but there appeared to be a general consensus of opinion among English-speaking people that the opening of parliamentary and legislative

[1] Lieutenant-Col. Ross had said that, according to his experience, the jurymen of to-day were on the average less intelligent than those of thirty years ago.

labours was an occasion of that kind. The members surely all felt their dependence upon God, and if they were honest in the views they expressed in the House, and the manner in which they discharged their duties, they were co-workers with God Himself. 1878

He need not remind the House that in the old land the custom of having prayers at the opening of the Houses of Parliament had existed from time immemorial. The ancient system was that a form of prayer was read daily by the Clerk of the House. Subsequently it was read by the Speaker; and in the seventeenth century the system of having it read by a chaplain was introduced. Both of the Houses at Washington were opened by prayer, and in most of the American State Legislatures the same course was pursued. It had always been the rule in the old Legislative Council, and it was now the rule in the Senate of Canada to open their proceedings with prayer. At the last Session of the House of Commons a motion had been introduced and carried providing for the opening of every daily Session of that House in the same manner, and this had suggested the present motion. In the old House of Assembly it was also the practice, up to 1830, to open the proceedings with prayer; but in consequence of a feeling which then existed with reference to the appointment of a chaplain—there being some objection to the appointment of one belonging to the Established Church—the order for prayers was rescinded by the Legislature, and it so re-

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mained up to the time of Confederation. In view of the practice of the land from which many of us had come, the customs of which it was the delight of Canadians to follow, and in view of the practice of Legislatures and Assemblies elsewhere, he would ask the House to adopt his motion. He asked, first that the propriety of opening the proceedings with prayer should be affirmed; and, secondly, that a committee should consider the form of prayer; the form which he would favour being composed of prayers familiar to all Protestants, and similar in substance to those used at Ottawa.

Mr. Sinclair (North Bruce) hoped that if prayers were to be offered they would not be according to a set form.

The Hon. M. C. Cameron said he had so much respect for everything pertaining to religion that he did not like to see it in any way endangered, and he did not wish that there should be any chance of its being used as a mockery. His honourable friend, the Attorney-General, suggested that a form of prayer should be used for the purpose of seeking the intervention of the Almighty and His guidance in the actions and deliberations of the House. Considering that honourable members were sent to the House to support one party or the other, and that they did so without any reference to the nature of the measures introduced, he did not think it was in the interests of morality and religion that a form of prayer should be offered up asking for Divine direction, when the course of nearly every member had already been determined.

It would, in his opinion, bring discredit upon religion, and on that ground he was opposed to the motion. 1878

The Premier said that he was surprised and disappointed at the observations of his honourable friend, as he had really expected him to support this motion. He did not agree with the leader of the Opposition that members voted for bad measures for party reasons; but he would only say that if there were men in the House who so acted, there was all the more necessity for prayer, for Divine blessing and guidance, to prevent such wickedness in the future. He quite sympathized with his honourable friend from North Bruce in his views with regard to forms of prayer, for he (Mr. Mowat), in consequence of his education, had been led to prefer extemporaneous prayers to liturgical worship. But it was well known that one of the principal Protestant Churches in the land was in the habit of using forms of prayer, and from his own personal knowledge of that Church, its ministers and its members, he believed there was as much piety in that Church as in Churches in which forms of prayer were not used. He thought a form of prayer would be necessary.

Mr. Cameron said he would have to decline the honour of serving on the committee, as he did not think he could perform the duties properly.

The committee was, however, appointed *nem. con.*; and a few days later the Attorney-General, as its chairman, reported, recommending that a form of prayer consisting of the State Prayers of

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the Anglican liturgy (viz.: those for the Queen, the Royal Family and Parliament), together with the Lord's Prayer, be read daily at the opening of the House, either by the Speaker or by some clergyman chosen by him.

The report was adopted; and the practice has ever since been maintained in the Legislative Assembly of Ontario.

The Session of 1879 lasted from January 9 to March 11. At its beginning Mr. W. R. Meredith, member for London, was elected leader of the Opposition in succession to the Hon. M. C. Cameron, who, on November 15, 1878, had been appointed a Judge of the Court of Queen's Bench. Mr. Meredith proved himself an able, energetic and fair-minded leader, and in this Session and during the next Parliament, he had as deputy leader of the Opposition a man of equally high standing, not only in his own party but throughout the whole Dominion. The Hon. Alexander Morris, D.C.L., Q.C., was a son of the Hon. William Morris, who had been a member of the Legislative Assembly and Council of Upper Canada and of the Legislative Council of Upper Canada, continuously for 39 years (1820 to 1859). Educated at McGill College, Montreal, and at the University of Glasgow, he was appointed a Q.C. by the Government of Ontario in 1876 and by the Dominion Government in 1881. He was a man of strong literary tastes, and to one of his essays, *Canada and her Resources*, a prize

was awarded by Sir Edmund Head, then Governor-General, on a reference from the Paris Exhibition Committee. In another essay, *Nova Britannia*, published in 1858 at the request of the Mercantile Library Association of Montreal, he warmly advocated the incorporation of all the British North American provinces under one Confederation. As may be remembered, he was one of the two gentlemen to whom Mr. George Brown first communicated his offer to join Sir John A. Macdonald in order to carry out Confederation, and he acted as an intermediary between the leaders of the two parties in bringing about the 'Great Coalition' of 1864. He had been a member of the Legislative Assembly of old Canada from 1861 till the Union, and sat for South Lanark in the House of Commons from 1867 till 1872, when he was appointed Chief Justice of the Court of Queen's Bench of Manitoba, being the first Chief Justice and Judge of that Court. In December of the same year he was appointed Lieutenant-Governor of Manitoba and the Northwest Territories, and held that position till 1877. In December, 1878, he succeeded the Hon. M. C. Cameron as the representative of East Toronto in the Legislative Assembly of Ontario, and at once took his place as deputy leader of the Opposition. Courteous in manner, thoroughly acquainted with parliamentary procedure, he had the faculty, which I have already attributed to Sir Alexander Campbell, of holding firmly his own opinions without giving offence to others. It

1879

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was he who moved the first Opposition amendment to the Address, blaming the Ontario Ministers for having taken part in the Dominion elections of the previous September, when Mr. Mackenzie and his Government were signally defeated; but though he fought hard and fought well for his party so long as he was in the Ontario House, his personal relations with members on the Government side were never in any way interfered with, and the friendship which had existed from boyhood between him and Mr. Mowat lasted until the death of Mr. Morris in 1889.

The two principal measures passed during the Session were, 'An Act respecting Jurors and Juries,' and 'An Act respecting Grand Juries.'

The first of these made some important changes in the qualification of jurors, the mode of their selection, and the number required to be selected. Under the former law, the first selection of jurors had been made by the mayor or reeve of each local municipality, and the assessor or assessors for the village or township, or (in cities and towns) the assessor for each ward. This was now altered so as to provide that the first selection for every county should be made by any three of the following persons, who were to be called 'County Selectors,' viz.: the senior and junior Judges of the County Court, the warden, treasurer and sheriff of the county and the mayor of any city situate therein. The number of jurors necessary to be chosen was hereafter to be determined by this

Board. Formerly it had been fixed by Statute at 964 in the county of York, 576 in Wentworth and 384 in other municipalities. The property qualification of jurors had also been determined by the selectors; and it varied in different localities. In the county of Frontenac it was $203, in York $1,244, in London $400, in Toronto $984. The average in towns was $435, in villages $451.80. For these varying and variable amounts the new Act substituted a uniform qualification of $600 in cities, and of $400 in towns, villages and townships. Thus the basis of eligibility was largely widened, and, in connexion with the other provisions of the Act, the burden of jury service was more fairly distributed. 1879

The exemption of Justices of the Peace and of members and officers of municipal councils from service as jurors in the inferior Courts was continued; but it was thought inadvisable to exempt them from jury service in the Superior Courts, since this would have deprived the country of the services of a body of 6,000 presumably intelligent men.

The Bill respecting Grand Juries reduced the number to be summoned for the Courts of Oyer and Terminer and General Gaol Delivery from 24 to 15; but on account of doubts as to the jurisdiction of the province to deal with this matter, so far as it affected criminal procedure, the Act was not to come into force until proclaimed by the Lieutenant-Governor. It was estimated that the effect of these two Statutes would be to reduce

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the expenses of the county councils of the province in connexion with the jury system from $138,000 to $98,000 per annum, or more than $40,000 a year; 'a saving,' as Mr. Hardy expressed it, 'of over $1,100.00 annually to each county, while at the same time our jury system is maintained and preserved in all its original efficiency.' 'This,' said he, 'I consider to be one of the most substantial measures of law reform which this Government has ever placed upon the statute book.'

This being the fourth and last Session of the Third Legislature of Ontario, there were the usual number of ante-election resolutions.

On the motion to go into Committee of Supply the Opposition challenged nearly every item in the estimates. Mr. Meredith moved to reduce the salaries of each of the Ministers to $3,500, of the deputy heads of Departments to $2,500, and all other salaries of departmental officers over $800 by ten per cent.—which was defeated by 47 to 31. He then moved *seriatim* to reduce the salary of the Attorney-General, the Treasurer, the Provincial Secretary, the Commissioner of Public Works and the Commissioner of Crown Lands by $500 each, and the salaries of officers who in each of these departments received more than $800 by ten per cent.; but all these ten motions were defeated by majorities varying from 17 to 19.

The item of $25,975 for immigration was challenged and carried by 48 to 33; that for the in-

spection of public institutions by 49 to 32, and the appropriation of $1,800, for the salary and expenses of a Division Court Inspector, by 45 to 33. 1879

At this point Dr. Clarke, of Norfolk, moved to reduce the item of $2,000 for the salary and expenses of the Inspector of Registry Offices by $500, which was supported by the Attorney-General and many of his followers, and carried by 43 to 35, Mr. Meredith and other prominent members of the Opposition being compelled, for consistency's sake, to vote in the affirmative. Not until the amendment had been passed did several members of the Opposition realize that the official affected by the vote was the Hon. Sidney Smith, formerly a member of the Legislative Council of old Canada, who, having been elected for West Northumberland as a Liberal in 1854, had abjured his party allegiance in 1858 to become Postmaster-General in the Macdonald-Cartier Government, receiving in 1866, as the reward of his tergiversation, the post of Inspector of Registry Offices. The incident created much amusement at the time, and was frequently referred to afterwards when similar buncombe resolutions were proposed by the Opposition on the eve of a general election.

There were in all fourteen Opposition amendments to the motion for supply, the average majority of the Government throughout being 27.

CHAPTER XII

THE FOURTH LEGISLATURE

THE second general election under Mr. Mowat's premiership was held on June 12, 1879. The chief ground on which the Opposition rested their claims to the support of the country was, as in the election of 1875, the alleged extravagance of the Government; and the ammunition of their platform orators was mainly supplied by a pamphlet issued under the signature of the Hon. David Lewis Macpherson, a Senator of the Dominion of Canada. The writer of this *brochure*[1] began by deprecating the interference of the local Ministers in Dominion politics, and continued by bitterly attacking Mr. Mowat and Mr. George Brown, chiefly on personal grounds. The following is an example of the general tone of the pamphlet :— 1879

'Vice-Chancellor Mowat was induced to lay aside the pure ermine of the Judge and to gird his loins with the tattered and unclean raiment of a trimming politician. It cannot be gainsaid that the tendency of that proceeding was to degrade the Bench . . . . Mr. Mowat has concealed the appalling fact that for each of the last

[1] It has been generally understood that the author of this pamphlet was the late Mr. John Hague, who was afterwards entrusted with the preparation of the Dominion 'Gerrymander Act' of 1882.

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four years [to December 31, 1877] the expenditure of the province has exceeded its revenue . . . . Duplicity is the characteristic of these gentlemen, who promised economy and have indulged in unexampled extravagance; who promised purity and yet have revelled in nepotism, jobbery and corruption.'

Of this interesting and dignified senatorial contribution to our political literature Mr. Mowat thus spoke in Toronto during the election campaign :—

'The pamphlet bears the name of a certain High Tory Senator, who, when it suits his purpose, claims to be a no-party man. The Senator is, in truth, one of the most pronounced party men in Canada. In spite of all his professions I do not know a man more blinded by party feeling to the merits and measures of his opponents. In his pamphlet he grandly declares that he has "appalling revelations" to make in regard to our local affairs, that he has discovered things which it will "astound the people to learn," and he regrets that the duty has devolved upon him of making these terrible facts known to the people of Ontario.

I wonder what my late opponent, Mr. Matthew Crooks Cameron—who has now reached the Bench, which I have no doubt that he will adorn—thinks of this charge against him, of ignorance, incapacity and unfaithfulness. (Hear, hear.) According to the Senator, a great wrong was being done before Mr. Cameron's

very eyes, and yet it appears that he, poor fellow, 1879
was unable to see it : it was reserved for a very amateur in provincial politics to perceive the wrong and to reveal it. (Hear, hear, and laughter.) I wonder what the Hon. Wm. McDougall thinks of the slap in the face which the Senator administers to him ? Whatever others may think, Mr. McDougall has hitherto believed himself able to perceive what was going on and to explain and denounce whatever deserved condemnation; and a good many things that did not. (Laughter.) But it now appears, according to Senator Macpherson, that money was being publicly wasted by a Government which he was elected to oppose, and that he never knew of the waste or told it to the country. He left this "appalling fact" to be "revealed" by the former representative of Saugeen. I do not know what intelligent politician in all Ontario has not long been aware of all the facts in reference to the surplus. The Senator had no other means of learning these facts than those of which the public had been long in possession. The public accounts were published every year; the members received copies; the newspapers received copies; these accounts were from year to year discussed in the House and in the country; the subject of the provincial surplus and the effect of our legislation on it formed the chief issue at our last general election, and have been a matter of fierce debate during every Session, and of invective in nearly every Opposition newspaper, from the

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year 1872 to the present time. (Hear, hear.) The public accounts of every year have given tables of comparison much more full and minute than those which the Senator has compiled—or had compiled—from them in a form that (he thinks) may serve his party for electioneering purposes. The public accounts for 1871 gave such a table of comparison for the years 1868 to 1871. The accounts for 1872 gave a like table of comparison between the expenditure of 1871 and 1872. The public accounts of 1873 gave a similar table of comparison between the expenditure of 1872 and 1873. In 1874, Mr. McKellar had tables prepared and printed unofficially and distributed, showing the comparison for all the years from 1868 to 1873, and giving also the railway expenditure and surplus distribution. The public accounts for 1874, 1875 and 1876 had tables of comparison similar to those of 1872 and 1873. Yet Mr. Macpherson fancies that he is the first and only genius who has discovered the true state of affairs. (Laughter.) He thinks, innocent gentleman, that the people had never before been told that the surplus of 1871 was not all in hand still, and he suggests that the people have been all along under a delusion as to the financial affairs of the country. Sir, the people have been under no delusion. (Hear, hear, and cheers.) It is Senator Macpherson who is under a delusion. (Renewed cheers.) He has discovered a mare's nest. He has been fancying that to be a novelty to every

one which was a novelty to no one but himself. 1879
(Hear, hear, and laughter.) After having read the pamphlet, I should not be surprised if I should some time read in the proceedings of some grave and learned body, that Senator Macpherson had read a paper to announce, as a startling discovery of his, that the sun rose in the east and set in the west. (Laughter.) The Senator speaks of my colleagues and myself as "political pygmies." I am afraid there is somebody else who belongs to that category. But what a poor set of men, according to this great Senator, there must be in public life here. Ontario must be in a very bad way. Its local Ministers are mere political pygmies, but they are great wrong-doers; and the Opposition leaders are such Lilliputian pygmies—Laughter—that, while all the corruption and extravagance which this amateur in provincial politics has discovered have been going on under their very eyes, they have not been aware of it.' (Hear, hear.)

The result of the election was a sweeping victory for the Government. Their majority—which during the previous Legislature had seldom exceeded 23—was increased to 25, and in seven of the twenty-six party divisions taken during the first Session it rose to 26, in three others to 27, once to 28, once to 29, and twice to 30. The contest on both sides was keenly fought. Mr. Mowat ran in two constituencies. In North Oxford his majority against Mr. James Currie, a local man, was 1157: he also

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contested the staunchly Conservative division of East Toronto, where he was defeated by the Hon. Alexander Morris by only 57 votes, the poll standing : Morris 2132, Mowat 2075.

Among the new members added to the Ministerial ranks were Mr. James Young, of North Brant; Mr. John Dryden, of South Ontario; Mr. H. H. Cook, of East Simcoe, and Mr. Robert McKim, of South Wellington. The Opposition rejoiced in the return of Mr. Donald McMaster, Q.C., who succeeded Mr. Grant in Glengarry, and Mr. F. J. French, who succeeded Mr. Fraser in South Grenville, the latter having abandoned that constituency to become member for Brockville. Mr. Caldwell re-captured North Lanark from Dr. Mostyn by a majority of 273; Mr. Thomas Murray was returned for North Renfrew, over the former member, Mr. Deacon; Dr. Robinson defeated Mr. John Flesher in Cardwell, and Messrs. Mack (Government) and Parkhill (Opposition) were elected by acclamation.

The House met on January 7, 1880, and continued in Session until March 7. On motion of the Attorney-General, seconded by Mr. R. M. Wells, Q. C., Lieut.-Col. Charles Clarke, M.P.P. for Centre Wellington, was unanimously elected Speaker.

The Lieutenant-Governor's Speech contained the following paragraph :—

'The requirements of the Legislature and its public departments have long since outgrown

the accommodation afforded by buildings which were erected at a time when the population of Ontario was but little over 200,000 souls, and when the business transacted was proportionately small. As long since as the year 1873, and again in 1877, the Government architect called attention, in his reports to the Commissioner of Public Works, to the necessity, on the grounds of health, safety and economy, for the early erection of a new Legislative Chamber and public offices. For some years it has been necessary to secure a hired house for the business of two of the departments, while that of a third is transacted at a distance of nearly a mile from the main buildings. Meantime large sums have been unavoidably expended every year in repairs necessarily incidental to deterioration effected by time. The public records, constantly accumulating, have been in great peril from insufficient security against fire; and increasing inconvenience has been experienced year by year, owing to the want of the space demanded for proper departmental arrangement. The report of the architect, with plans and estimates for the construction of new buildings, on a more eligible and more healthy site, will be laid before you. The value of the present site for other purposes will materially reduce the cost of the new structure, while the price of material and labour is favourable at this time for such undertakings. It appears to me, therefore, to be worthy of your serious consideration whether the erection of an edifice commen- 1880

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surate with the needs of the public service and creditable to the province should be longer delayed.'

The consensus of opinion in favour of the erection of new buildings was so strong in the House that a motion by Mr. Meredith, 'that no sufficient reason exists for incurring at the present time the large expenditure involved in the erection of new parliamentary and departmental buildings,' was defeated by more than two to one, the division being, yeas 25, nays 55; majority for the Government 30.

Two measures of the Session of 1880 deserve to be noticed. One was a Bill to increase the jurisdiction of the Division Courts, in claims for the recovery of debts or money demands, from $100 to $200, where the amount was ascertained by the signature of the defendant, and in ordinary actions of tort or replevin from $40 to $60. This was in accordance with Mr. Mowat's policy of law reform. It not only facilitated and expedited the collection of small claims, but it also reduced the cost of litigation by transferring them to a tribunal in which legal expenses are reduced to a minimum. In order also to bring the officials of these Courts more directly under the control of the Government and the Legislature, the Act further provided for the appointment of the clerks and bailiffs of Division Courts by the Lieutenant-Governor in Council.

The Dominion Government having announced their intention to repeal, during the Session of 1880, the Insolvent Act of 1875, the mercantile commun-

ity were threatened with a renewal of the unsatisfactory conditions which had formerly prevailed, when, in the absence of such an Act, the first creditor who obtained judgement and execution against a debtor secured an unfair advantage over all the others. To prevent this, and to secure the equitable distribution of insolvent estates, Mr. Mowat very ingeniously drafted what was practically a bankruptcy law, differing therefrom in this respect only, that a person in insolvent circumstances could not obtain a discharge without paying his debts in full. 'The Act to prevent priority among execution creditors'—better known as 'The Creditors' Relief Act (1880)'—provided that a sheriff who levies any money upon execution against the property of a debtor shall enter in a book open to public inspection without charge, a notice stating that such levy has been made; and any person who within one calendar month thereafter files either an execution or a claim, verified by affidavit, against the debtor and not disputed by him, is to share rateably in the proceeds of any other levy or levies made by the sheriff upon the property of the debtor within that period. The enactment was perilously close to the limit of provincial jurisdiction; and had the Minister of Justice at Ottawa been of a narrower type it would probably have been the subject of another constitutional battle between the Dominion and the province. It so happened, however, that the gentleman then filling this office was the Hon. James Macdonald, afterwards Chief Justice of the

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Supreme Court of Nova Scotia. Mr. Macdonald's memorandum to His Excellency is worth quoting :—

'Taking this Act section by section, much may be said in favour of the view that its provisions are within the legislative authority of the provincial Legislature; but, taking its effect as a whole, much can be said in support of the contention that it trenches upon the subject of bankruptcy and insolvency, over which the Parliament of Canada has exclusive legislative authority.

'In view of the doubts which exist with respect to the matter; in view of the fact that the insolvency laws of the Dominion have been repealed; in view also of the provisions of s. 28 of the Act, which declares that it is not intended to interfere with any insolvency laws which may from time to time be in force, but is to be subject to such laws; and, lastly, in view of the fact that if the power of disallowance be not exercised any person who wishes may test the constitutionality of the Act in any of the Courts, I cannot recommend that the power of disallowance be exercised with respect to this Act.'

The Act was, accordingly, allowed to stand, and is now Chap. 78 of the Revised Statutes, 1897.

During the spring of 1880 Mrs. Mowat's health became a source of anxiety to her family; and she was recommended by her physician, the late Dr. Small, to cross the Atlantic, take medical advice in

London and remain for a year at some German watering place. She was unwilling to make the journey without her husband, and, though somewhat reluctant to leave his work, he went with her. They sailed from New York by the *City of Berlin*, accompanied by two of their daughters; and, after spending some weeks in London, went on to Edinburgh, where Mrs. Mowat remained while Mr. Mowat and his daughters took a trip to Caithness, the original home of the family. At Castleton, near Thurso, they paid a visit to Mr. Mowat's aunt, a sister of his father.[1] Mr. Mowat records: 'On our visit she was quite active and in possession of all her faculties, except that her hearing was not very good.' His notes proceed: 'Drove from Castleton to Dunnet churchyard, where my grandfather and grandmother Mowat are buried. Thence to Canisbay. Called on the minister of the parish, the Rev. James Macpherson, who was very kind and attentive. He went with us to see Buchollie Castle, and took my daughter Laura into the ruin. Edith and I did not go into it. Thence we went to John o' Groat's Inn, where we remained for the night, and next afternoon drove to Wick; next day returned to Edinburgh. Thence we all went to London and on to Paris. After some days' stay in Paris we went to Switzerland and crossed the Simplon from Brieg into Italy in a private (hired) carriage. The day was fine and we all greatly enjoyed the crossing. Thence to Stresa, on Lake Maggiore, and by Lakes Lugano and Como to

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[1] She died seven years afterwards at the age of 102.

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Bellagio, from which we went on to Milan, Verona, Venice, Innspruck, Munich and Reichenhall.'

Mrs. Mowat and her youngest daughter remained at Reichenhall. Mr. Mowat and Miss Mowat returned *via* Mayence and the Rhine to Cologne, thence by train to Brussels, crossing the Channel from Ostend to Harwich. After a short stay in London they crossed to Ireland *via* Holyhead, and spent three days on an Irish jaunting car driving through the county of Wicklow, 'and a most pleasant three days they were.' Thence to the Lakes of Killarney, and on by coach to Limerick, and by rail to Cork. 'Caught the *City of Chester* at Queenstown, arriving in Toronto on September 16.'

After spending some time at Reichenhall, under the care of Dr. Liebig, a son of the celebrated chemist, Mrs. Mowat and Miss Edith Mowat went to Munich, thence to Meran for a month, and after that to Florence, Rome and Naples, where they spent the winter, returning in April, 1881, to Paris, where Mr. Mowat met them, and together they passed some delightful weeks, chiefly in Scotland and the Cumberland Lakes.

From Wick, the county town of Caithness, Mr. Mowat writes to his brother John :—

'June 14, 1880.

'Here I am, writing to you from Caithness, a thing which less than a year ago I thought impossible and can hardly realize even now. Laura and Edith are with me, being as anxious as myself to see the land of our forefathers. I left Jane

in Edinburgh, as we feared the cold winds of Caithness would be too much for her; and I am now sure they would have been. The noise and bustle of London kept me in a fever during the fortnight we were there; but we saw a great deal. I was in the House of Lords and heard Lord Cairns explaining his "Burials Bill"; in the Commons several times and listened to more of the principal speakers. Bradlaugh's case was up on one of the days. I was also in the Law Courts a good deal, and saw a little of social life. I rather avoided this sort of thing, because of the time it takes from what I was more anxious for. However, I received a card from Lord Kimberley to his state dinner, to celebrate the Queen's Birthday, "levee dress"; and I went, and enjoyed the opportunity it gave me for conversation. I accepted also an invitation to dine with Sir Alexander Galt, our new High Commissioner, and another from Dr. Rae, of Arctic celebrity. On both occasions I met men whom I was glad to know. At Dr. Rae's, the Chinese interpreter attached to the Chinese Embassy—a most intelligent man—finding that I was from Canada, expressed the hope that the Bill allowing a man to marry his deceased wife's sister would ultimately pass, though the Senate had defeated it this time. Fancy a Chinaman reading such matters and interested in them!

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'Edinburgh is truly lovely. The Nelsons were very kind and contributed greatly to our enjoyment; but I looked forward to a visit to Caithness

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with greater eagerness than to any other place . . . . I called on Mr. Tolly, minister at Dunnet, and on Mr. Macpherson, minister of Canisbay. The latter is a very hearty man and insisted on accompanying us to Buchollie; all this without knowing more about me than that I was "a Mr. Mowat from Canada." I was anxious to attend a service in the church where our forefathers worshipped for centuries, and near which many of them are buried. What a queer old church it is—two hundred years (or so) old, and very plain and ugly. The congregation was large, and if the sermon was an average one I do not wonder that it is the largest congregation connected with the Establishment in Caithness. The people were quite as well dressed as in any of our own country congregations, and they have a remarkably intelligent and healthy look. It seemed a pity that men with brows which indicated that they could get on if they had the chance, should have no field but poor Caithness. The bank manager at Castleton told me, however, that the aggregate amount of deposits is astonishing. This must be by dint of the hardest pinching and work, for most of Caithness that I saw has a dreary look to a Canadian.'

'Innspruck, July 2, 1880.

'We have reached this historic old town, the scenery around which can hardly be surpassed for beauty; and as we have just been reading about the exploits and sad end of Andrea Höfer,

the William Tell, or Sir William Wallace, of the Tyrol, our interest in the place and its surroundings was all the greater. We have splendid rooms with a grand view, but they are on the third floor, the landlord having been unable to do better for us. We have seen so much that is beautiful that we have ceased to exclaim about it as we did at first. Even the tamest roads were interesting at first: contrasted with the utter want of beauty along the railways of Ontario, noble province though it is. We enjoyed the railway journey, even from Calais to Paris, and again from Paris to Geneva; but the country there is dull as compared with the drives about the old city of great Calvin, or with the journey from Vevay or Montreux, where we left Lake Geneva for Brieg. Then the drive across the Alps from that old town—by the noble road which Napoleon built to make the passage to Italy easy for his cannon—to Stresa on Lake Maggiore was grand, *grand*, GRAND. We were in a state of delight the whole way, and the journey, which took one whole day, from morning till evening, was as comfortable as on any macadamized road I ever travelled. 1880

'We have crossed the Alps a second time on going from Trento to this place, and the scenery is wholly different, but perhaps more beautiful, though not so grand. This was our finest railway journey, while the crossing of the Simplon was our grandest carriage drive.

'But the drive from Brieg to Stresa was not the only pleasant and beautiful drive we had before

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reaching this place. The drives from one Italian lake to another, from Luino, on Lake Maggiore, to Lugano, on Lake Lugano, and from Porlezza to Menaggio, on Lake Como, were most lovely. Our shorter drives in the neighbourhood of Stresa and of Bellagio, while we stayed at these places, and our drives here have also been specially enjoyable; and then the lakes! I am afraid I must admit that Muskoka, whose beauties we celebrate as Canadians, is nothing to the Lake of Geneva (Leman), not to speak of the far more beautiful Italian lakes I have named—Maggiore, Lugano and Como. We had planned to spend a day at the town of Como, by way of doing reverence to the two Plinys, whose birthplace it seems to have been; but we learned that there was not much in the old town to interest a traveller, and we therefore stopped short at beautiful Bellagio, and, after spending a couple of days there, went down by steamer to Como, and thence on by train to Milan, consoled by knowing that in seeing the Lake of Como we had seen what the Plinys had often sailed over.

'We were at Venice on our way here, reaching it in one day from Milan by the dustiest road and on the hottest day that we had ever experienced. Nor was the road an interesting one, except as we skirted the Lago di Garda; but I did want to see Venice—its streets of water and its old palaces built along them—and to sail in a gondola. I had this pleasure; but it was greatly marred by the excessive heat. Our guide was a pensioned

captain of the Italian army, but his pension was so small that he had been obliged to betake himself to that humble occupation. The people generally must be very poor, for he told us that the gondoliers make on an average not more than two francs a day, that they and their families number 40,000; and the ordinary wage of a mechanic is a franc and a half a day. Purchasing in Venice, however, we found expensive. The most costly lunch we ever had was at a restaurant there. While at Milan we had to pay less than half for a better one. 1880

'We went to see the Armenian Convent, as it is called, which is situated on an island opposite the city. The monk who showed us around said that they were really Roman Catholics, though they differed in a few points. He was a very intelligent man, spoke English fairly well; knew about Canada. He asked me to write my name in one of the visitors' books: one part was for Englishmen and another for Americans, etc. When I told him that I was from Canada, he said, "Then you are English, not American," and he referred to the Princess Louise being the wife of our Governor-General. He spoke with contempt of married priests; said their Church did not forbid them to marry, but few took advantage of the privilege . . . . We have now been four Sundays on the continent. The first we spent in Paris, and on that one only have we had an opportunity of attending a Presbyterian service. It was held in a room

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in the third story, or attic, of a building at the back of one of the principal streets, humbly furnished, and used at other times, I think, for other purposes. The room would hold about a hundred, and was quite full in the forenoon, but only half full at the second (afternoon) service. There is a regular congregation, the pastor of which lately died, and the services were conducted by a minister from Fife-shire, who preached with freshness and more than average ability. I had a little talk with him after the second services. Most of the shops were open, and a young Scotchman who was in church told me that work was going on as usual in some of the establishments which were apparently closed.

'Our next Sunday was at Geneva, where we saw the church in which Calvin preached, and where I had the gratification of sitting down in the chair in which the great Reformer used to study. The maid who showed us the church said the preaching was still Calvinistic. I learned afterwards that there had been an English service in this church on the Sunday afternoon that we were there; but we had been assured by our landlord that the only English services in the city were the Episcopalian. We, therefore, attended the English Church, and I am afraid were not much edified. The clergyman always began his part before the congregation had quite finished theirs; and, to me, this deprived the service of reverence or rational meaning. He preached a

fair sermon on an Old Testament subject, without making one allusion to anything that has come to us from the New. 1880-81

'Our third Sunday was at Bellagio, where there were two services, morning and evening, both Episcopal. At the evening service only ten were present, including our four selves. The clergyman was an Evangelical old gentleman, with whom I had some pleasant conversation after dinner. His morning sermon had been on the observance of the Lord's Day, and he spoke against travelling on Sunday, as well as "pursuing our own pleasures on that day"; but, strangely enough, at dinner he claimed not to have made this or any practical application of his sermon.

'Our fourth Sunday was at Trento, in the Austrian Tyrol, where there was no English service at all. It is a place of 17,000 inhabitants, all Catholics, I suppose, for I could hear of no Protestant service in any language, yet the streets were nearly as quiet as they are on a Sunday in Kingston or Toronto. A few shops were open, most of them vegetable, fruit or wine shops, but there was no appearance of business at any of them.'

The Session of 1881 was opened on January 11 by the newly appointed Lieutenant-Governor, the Hon. John Beverley Robinson, and continued until March 4. It is notable because of two most important pieces of legislation : one marking the

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completion of that series of law reforms which Mr. Mowat had begun in the Session of 1873; the other a measure which, in the opinion of the Hon. Edward Blake, was destined to raise the most serious constitutional question which had come up since Confederation.

The Judicature Act of 1881 is one of the greatest measures of reform ever passed by the Ontario Legislature. The Administration of Justice Acts of 1873 and 1874 had but touched the fringe of the changes which the Premier from the first had contemplated and desired. They gave, indeed, to the Common Law Courts a very extensive equitable jurisdiction, and to the Court of Chancery a common law jurisdiction which it had not before; but the Judicature Act effected a complete revolution in the machinery of the Courts, assimilating their practice and procedure, so that they became no longer separate Courts, but divisions of one Court. It would be impossible to give in a few words any adequate idea of the sweeping reform effected by this Act, which covers more than 200 pages in the printed Statutes of 1881. The principal Act consists of 91 sections, to which are appended 494 rules governing the new practice, and an appendix containing 184 forms, to take the place of those previously in use. No one who was not thoroughly familiar with the practice, both in Chancery and Common Law, could possibly have undertaken this stupendous work. The Bill occupied the attention of the House for more than two weeks of the Session,

every section being carefully considered in committee; and an evidence of the care and skill with which it was prepared is afforded by the fact that it passed through all its stages without a division, and unaltered, except for a few clerical amendments. The object of the Act, as stated by Mr. Mowat in introducing it, was to simplify the administration of justice, and to do away altogether with the existing anomaly of the wide difference between the Courts of Law and the Courts of Equity. He reminded the House that the Courts of Equity in England had arisen out of the necessity of finding some way of mitigating the severity of the Common Law, and that there had gradually grown up two entirely different systems of practice and procedure. The English Judicature Act, he said, had been introduced in 1873, and greatly amended in 1875, and, during the seven years of its operation, had given great satisfaction. In 1877 the same system had been introduced into Ireland and was successful there also. 1881

The Ontario Judicature Act completely abolished the distinction between the Courts of Law and the Courts of Equity. The Courts of Appeal, Queen's Bench, Common Pleas and Chancery were consolidated into one Court called 'The Supreme Court of Judicature for Ontario.' This Court was to consist of two divisions :—

(1) The existing Court of Appeal, henceforth to be called 'The Court of Appeal for Ontario,' and

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(2) 'The High Court of Justice for Ontario,' to be composed of the three existing Superior Courts, henceforth to be styled respectively the 'Queen's Bench Division,' the 'Common Pleas Division' and the 'Chancery Division.'

The Chief Justices of the three existing Superior Courts were to be Presidents of their respective Divisions; the senior Chief Justice to be President of the High Court. County Court Judges were to be local Judges of the High Court, and, as such, were to have jurisdiction in certain Superior Court actions; and it was declared that the High Court of Justice and the Court of Appeal respectively, should have power to grant, and should grant, either absolutely or on reasonable terms, all such remedies as any of the parties to an action might appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in the cause or matter, so that, as far as possible, all matters so in controversy between the said parties might be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

The Orders, or Rules of Court, appended to the Act, dealt almost wholly with the subject of practice and procedure. Instead of the old forms of pleading at Common Law by declaration, plea or demurrer, replication, rebutter and surrebutter, the plaintiff, after bringing the defendant into

Court by writ of summons and appearance thereto, now files a statement of claim setting forth as concisely as possible the material facts upon which he relies, but not the evidence by which they are to be proved. To this the defendant files a statement of defence, and therein he is also to specify any set-off or counter-claim which he may have against the plaintiff. The plaintiff may then file a replication; and in default of his doing so within a limited time the pleadings are deemed to be closed and the case is ready for trial. Nothing could be simpler or less expensive than this procedure; but it is not surprising that men trained in the old system of Common Law practice, and educated to believe it far superior to the simpler forms of pleading which prevailed in the Court of Chancery, should have viewed with prejudice a system which rendered useless much of their technical learning, and that Common Law Judges, accustomed to pleadings which presented definite issues for trial, objected to being compelled, perhaps in the hurry of a trial at *nisi prius*, to extract from the statements of the plaintiff and defendant and the evidence given at the hearing, such questions as would secure the proper determination of the action. But here, as in England, the prejudice of lawyers and Judges had to give way before the more pressing consideration of public interest. Even in conservative England fusion had been gradually accomplished; and now that it has been in force in Ontario for more than twenty years, its advantages to suitors are so obvious that any at- 1881

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tempt to return to the former system would be doomed to inevitable failure. To the next generation it will seem absurd and almost incredible that there should have been so lately in this province, and even under the same roof, two different systems of civil procedure, two sets of Courts governed by different doctrines of jurisprudence, and two sets of officials connected with these Courts; that in the same circuit-town one Judge should sit to try Common Law cases and another to try Chancery cases; that every interlocutory motion in a civil action in the Superior Courts must be heard at Osgoode Hall, thus necessitating the employment of Toronto agents on both sides; that the Court should sit *in banc* only four times during the year, and that in appealing against an erroneous ruling at the trial the only available evidence should be the notes made by the presiding Judge. Even if Mr. Mowat's law reforms have dealt a fatal blow to scientific pleading—(which Mr. Odgers does not admit)—even though they have sorely diminished the income of nearly every practising lawyer in Ontario, they have at all events secured uniformity and simplicity of procedure, economized judicial strength, diminished the volume and lessened the expense of litigation, and immensely expedited the administration of justice.

The other notable Government measure of the Session was entitled 'An Act to protect the Public Interest in Rivers and Streams.' Mr. McLaren, a lumberman who owned timber limits on both sides of the Mississippi River, a small affluent

of the Ottawa, had built a dam and slide for the purpose of floating sawlogs and timber down to the latter river. Messrs. Boyd Caldwell & Co., lumbermen owning limits higher up the stream, floated their lumber down to and over this dam, to which Mr. McLaren objected, and on the strength of a case decided in 1863,[1] obtained from Vice-Chancellor Proudfoot, an injunction preventing the use of his dam and slide by Boyd Caldwell & Co. Mr. Mowat considered the judgement of the Vice-Chancellor to be erroneous, and induced the House to pass 'An Act for protecting the public interest in rivers, streams and creeks,' which provided that 'so far as the Legislature of Ontario has authority so to enact, all persons shall have and are hereby declared always to have had, during the spring, summer and autumn freshets, the right to float and transport sawlogs and other timber down all rivers, creeks and streams in respect of which the Legislature of Ontario has authority to give this power.' But this right was declared to be subject to the payment of tolls, to be fixed by the Lieutenant-Governor in Council, 1881

[1] *Boale* v. *Dickson*, 13 C.P. 337, in which Chief Justice Draper, in giving judgement that a man who had built a dam on a small river was entitled to claim tolls for the use of the dam by a lumberman in running timber down the stream, expressed, *obiter*, his opinion that the 5th section of the Act, 12 V. c. 49.—which enacts that all persons may float sawlogs and other lumber down *all streams* in Upper Canada during the spring, summer and autumn freshets—applied only to such streams as in their natural state without improvements would, during freshets, permit the passage of said logs, timber, etc. This dictum had been followed in two subsequent cases in the same Court, viz.: *Whelam* v. *McLachlan*, 16 C.P; 102, and *McLaren* v. *Buch*, 26 C.P. 539.

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having regard to the original cost of the construction and improvements, the amount required to maintain them and to cover interest on the original cost, etc.; and it was declared that the person entitled to tolls should have a lien on the logs or other timber passing over such constructions or improvements for the amount of such tolls, such lien to rank next after the lien of the Crown, if any. On the third reading Mr. Meredith moved an amendment, declaring that the Bill was calculated to interfere with important private interests without making adequate compensation for such interference; but his motion was defeated by 56 to 23.

Mr. McLaren then petitioned the Minister of Justice at Ottawa, who recommended the disallowance of the Bill on the precise ground mentioned in Mr. Meredith's motion, viz.: that it took away private property without making adequate compensation. Mr. Crooks, who was acting as Attorney-General in the absence of Mr. Mowat, replied to the Minister of Justice that this was not a ground on which an Act of the Legislature of any province could be disallowed, that the stream was one wholly within the jurisdiction of the province, and that if the Legislature had done any wrong, the appeal was to the people of the province and not to the Government at Ottawa. The Bill was, however, disallowed by proclamation, dated May 21, 1881. It was promptly re-enacted *totidem verbis* by the Ontario Legislature in the Session of 1882 and again disallowed; was, for

the third time, enacted by the Ontario Government in the Session of 1883, and again disallowed. 1881-4

Meantime the suit of *McLaren* v. *Caldwell* had been keeping the even tenor of its way from one Court to another, and, singular to say, was meeting with precisely the same fate as had attended the case of *The Queen* v. *Mercer* (*ante*, pp. 244-6). The Court of Appeal for Ontario unanimously reversed the decision of Vice-Chancellor Proudfoot, in favour of McLaren, and declared that the Statute on which the Common Pleas case had been decided applied to all streams, whether floatable in their natural condition or not.[1] The Supreme Court[2] reversed this judgement; and the case then went to the Judicial Committee of the Privy Council, which unanimously restored the judgement of the Court of Appeal, and declared that the right to float timber and logs down streams, conferred by the Canadian Statute of 1849, was not limited to such streams as are floatable in their natural state without improvements, but extends to the user without compensation for any improvements upon such streams, even when the streams have been thereby rendered floatable.[3] Again, and for the fourth time, the Bill, which had three times been disallowed by the Minister of Justice at Ottawa, was re-enacted in 1884 by the Legislature of Ontario, the only change made therein being that the tolls payable by persons using the improvements were to be fixed by the County Judge

[1] 6 Ont. App. Rep. 456. [2] 8 S. C. R. 435. [3] 9 App. Cas. 392.

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or Stipendiary Magistrate, instead of the Lieutenant-Governor in Council.

During one of the debates on the Bill the Premier quoted, amid the plaudits of his followers, the following extract from a speech of Sir John A. Macdonald's in 1872, when a question concerning the disallowance of the New Brunswick School Act was before the House of Commons. According to the *Mail's* report Sir John said :—

'The provinces have their rights; and the question is not whether this House thinks the local legislature to have been right or wrong. Whenever such a matter as this comes before us we should say at once that we have no right to interfere as long as the different provincial legislatures have acted within the bounds of the authority which the Constitution gives them. If they did not know that the question they were arguing and discussing and amending and modifying to suit their own people would be law, it was all a sham, and the federal principle was gone forever. If this House took the great responsibility of interfering with every law passed by provincial legislatures, it would, instead of being as it is now a general Court of Parliament for the decision of great Dominion questions, become simply a Court of Appeal to try whether provincial legislatures were right or wrong in the conclusions to which they came.'

And the Hon. Edward Blake, Q.C., who had been counsel for Mr. McLaren in the Court of

Appeal, thus spoke in 1886 of the constitutional point involved in the case :— 1881-4

"I have always considered this to be, of all the controversies between the Dominion and the provinces, by far the most important from a constitutional point of view, for it involves the principle which must regulate the use by the Dominion Government of the power of disallowing provincial legislation. This is a vital question as affecting our local liberties. I maintain that under our Constitution, properly interpreted, the provinces have the uncontrollable power of passing laws, valid and binding laws, upon all those matters which are exclusively within their competence, except, perhaps, in the rare cases in which such legislation may be shown substantially to affect Dominion interests. If you are to admit the view that the Dominion Cabinet may veto and destroy your legislation on purely local questions, you make your local legislatures a sham, and you had better openly, honestly and above-board do that which the other system aims as, viz.: create one central legislative power and let the Parliament at Ottawa do all the business . . . . I inquire only as to this: is the law passed by the local legislature within the exclusive competence of that legislature and not materially affecting Dominion interests ? If so, the Ottawa Cabinet *have no right to touch it.* (Cheers.) I admit—and I rejoice—that there is an appeal from the power that made that law, but that appeal is from the legislature which

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passed the law to the people who elected that legislature and who can elect another to their minds. (Loud cheers.) If a law is passed by your legislature which is unjust, which is bad, which is inexpedient, you have the power to consider the conduct of the members who passed that law and to return men to Parliament to repeal it, to amend it, or to mould it according to your notions of what is just, expedient, honest and in the public interest. Are you not satisfied to live under the rule of your own people ? Are you not equal to self-government ? "

If the merits of this Bill had not been obscured by political considerations it would probably never have been objected to by the Opposition or disallowed by the Dominion Government; but Mr. McLaren happened to be a prominent Conservative, while a nephew of Mr. Caldwell sat in the Ontario Legislature as a supporter of the Government. The Opposition, therefore, endeavoured from the first to make it appear that the object of the Bill was to deprive a Conservative of his rights in favour of a Reformer; but, as was subsequently pointed out in the argument before the Privy Council, Mr. McLaren's only right to any compensation for his improvements depended upon this very Statute : since, under the old law, his improvements could have been used without his having a right to any compensation whatever. It was, moreover, stated in the debates in the House that the Bill would apply to 224 streams in the province of Ontario; so that it was

really what its name indicated, 'An Act to protect *the Public Interest.*' It will also be manifest to any one who has read Stuart Edward White's delightful book, *The Blazed Trail*, that but for this law, a lumberman holding limits at or near the mouth of a stream, could, by erecting a dam or otherwise improving the floatability of the stream, absolutely prevent any proprietor higher up the stream from getting his timber to market by way of it. This was Mr. Mowat's fourth great victory for provincial rights. 1882

Shortly after the close of the Session Mr. Mowat made his second trans-atlantic trip, joining in Paris his wife and daughter, whom he had left the year before at Reichenall, and who had spent the winter in Italy. Together they repeated their Scottish tour of the previous summer, and Mr. Mowat paid his second visit to Caithness. On his return the party spent some delightful days among the Cumberland lakes, always their favourite spot in England. While in London he attended a conference with the counsel in the cases of *Parsons* v. *The Citizens'*, and *Parsons* v. *The Queen Insurance Co.*, and was present at the argument of these cases before the Judicial Committee of the Privy Council, though he took no part therein. He returned to Canada in September.

The Session of 1882 began on January 12 and ended on March 10. In the Speech from the Throne the Lieutenant-Governor congratulated

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the House upon the increase in the population of the province, as shown by the last census, but regretted that, 'notwithstanding the award of the distinguished arbitrators appointed by the two Governments, the federal authorities still continue to dispute the right of the province to an extensive portion of its territory, and have greatly increased the practical evils of the situation by transferring to the province of Manitoba the claim of the Dominion to the most valuable part of the disputed territory.' Bills were promised relating to the construction of waterworks by cities, towns and villages; for the crossing of railway tracks by streets and roads; for maintaining and promoting the public health; for simplifying the laws concerning real property and conveyancing; for removing defects in the law of evidence, and for placing on a more satisfactory footing the law of libel in certain cases.

An amendment by Mr. Meredith to the Address, regretting that the Government had 'not taken the only lawful and constitutional means which, in the absence of the approval of the award by the Parliament of Canada, are open for the determination of the Boundary Question' was defeated by 54 to 26; majority for the Government 28.

Among the eighty-nine Bills passed during the Session was one establishing a Bureau of Industries in connection with the Department of Agriculture, by which the Commissioner of that Department was directed 'to institute inquiries and collect useful facts relating to the agricultural,

mechanical and manufacturing interests of the province, and to adopt measures for disseminating or publishing the same, and, amongst other things, to procure and publish early information relating to the supply of grain, bread-stuffs and live stock in the other provinces of the Dominion, in Great Britain, and in the United States and other foreign countries where the province finds a market for its surplus products.' The measure went into operation at once, and has proved to be of great practical value. 1882

Another matter which received the attention of the Legislature was the public health. An Act on this subject had been passed in 1873, which provided for the compulsory cleansing of private premises, for the creation of local Boards of Health by municipal authorities, and of a central Board of Health during the prevalence of any formidable epidemic, endemic or contagious disease. But experience had shown defects in the working of the Act, and a new and much more perfect one was passed during this Session. This Act established a provincial Board of Health, to consist of seven members, of whom four, at least, should be medical practitioners. Its duty was to take cognizance of the interests of health and life among the people, to study the vital statistics, to make sanitary investigations respecting the causes of disease and especially of epidemics, to publish information bearing on these and cognate matters, to advise officers of the Government and local Boards of Health, to establish hospitals

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for the treatment of small-pox or other diseases dangerous to the public health; and very extensive powers were given to the Provincial Board in order to enable it to carry out the intention of the Act. It is difficult to over-estimate the beneficial results of this Statute in preventing the spread of epidemic and endemic diseases, and in compelling the use of improved systems of sanitation.

Another Act of the Session provided for the establishment of free municipal libraries. Upon a petition signed by a specified number of electors being presented to the council of a municipality, the latter might, subject to the approval of the electors, establish a free library, to be governed by a Board of Management, consisting of the mayor or reeve, three persons appointed by the council, three by the Public School Board and two by the Separate School Board. The Library Board was to report annually to the council an estimate of the expenditure required for the library, and the council were to levy therefor a special rate not exceeding half a mill in the dollar. The city of Toronto at once took advantage of this enactment, and municipal free libraries have since been established in a number of cities and towns of the province.

During this Session the line of cleavage between the Government and the Opposition on the question of provincial rights became more clearly defined than ever before. I have elsewhere[1] referred to the resolutions relating to the Boundary

[1] See *post*, pp. 393-8.

Award, which indicate this fact; but other illustrations to the same effect are not wanting. On the third reading of the 'Rivers and Streams Bill,' Mr. Meredith moved a resolution declaring that 'the Bill is calculated to interfere with important and private interests without making adequate compensation therefor, and is therefore opposed to sound principles of legislation, and calculated to form a dangerous precedent,' which was lost by 49 to 27. 1882

Later in the Session the Attorney-General, seconded by Mr. Crooks, moved a series of resolutions, reciting that whereas many railways that had been incorporated by the province, and had received large sums from the people of Ontario by way of provincial and municipal aid, were endeavouring, in order to escape from the proper controlling power and supervision of the provincial Legislature, to have themselves declared by the Dominion Government to be "works for the general advantage of Canada,"[1] this House respectfully but firmly asserts that no such railways should be declared to be for the general advantage of Canada, but that they should be left to be dealt with and controlled by the people of this province through their local Legislature,' and that 'where a company whose railway has been constructed under a provincial charter seeks to escape provincial control, by procuring its railway to be declared a

[1] Under 391 of the British North America Act such a legislative declaration would bring these works under Dominion instead of provincial jurisdiction.

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work for the general advantage of Canada, the company should be compelled to procure from the provincial Legislature, by which it was incorporated, an assent to such declaration; or, at least, to show that such assent was applied for, and, if refused, was so refused on improper or insufficient grounds.'

Mr. Meredith proposed to substitute for the latter portion of this clause a declaration that 'notice ought to be given to the Provincial Secretary of the company's application, and an opportunity afforded to the province to be heard in opposition thereto;' but the amendment was lost by a majority of 34, the yeas being 19, the nays 53.

The fourth and last Session of the fourth Legislature of Ontario began on December 13, 1882, and ended on February 1, 1883. The principal Government measures were the consolidation of the Municipal Act and the Jurors' Acts, and a number of Statutes intended, like the Companies Acts of 1874, to facilitate the incorporation of companies without the delay and expense of special Acts. Among these were,—a Bill for the construction of street railways in cities and towns, a Bill to facilitate the erection of gas-works by municipalities, and a Bill respecting municipal public parks.

On the question of provincial rights the Opposition adhered to the stand which they had taken during the previous Session, and showed again in many ways that their allegiance to their chieftain

at Ottawa was stronger than their regard for the interests of the people of Ontario. 1882-3

On the motion to go into Committee of Supply, Mr. Meredith moved a resolution, expressing regret that 'no steps have been taken by the Government of Ontario for the final determination of the Boundary Dispute by means of a reference to the Judicial Committee of the Privy Council, *although the federal authorities continue to urge settlement by that method*,'[1] and that 'in the opinion of this House the responsibility for the evils arising from the delay which has occurred since the refusal of the Parliament of Canada to give effect to the award rests upon the Government of Ontario,' which was defeated by 53 to 25.

A motion by the Hon. Mr. Morris, upholding the action of the Dominion Government in disallowing the Rivers and Streams Act, was defeated by 49 to 25; and Mr. Meredith's amendment to the third reading of the Bill, declaring its provisions to be highly objectionable and dangerous in principle, was lost by 52 to 26, or two to one.

A motion by Mr. Merrick, that 'the "National Policy," twice endorsed and approved at the polls, has amply fulfilled its promises by increasing the prosperity, etc., of the provinces, and ought to be recognized as a part of the settled policy of the country, etc.,' obtained the support of the entire Opposition, viz.: 25 votes in a House of 88 members.

[1] This statement was incorrect. See *post*, pp. 390, 396.

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This being the last Session before a general election, there were the usual number of resolutions intended for election purposes.

Mr. Meredith moved that the office of Minister of Education should be abolished, and the office of Chief Superintendent of Education restored ; and again, that the Boards of Licence Commissioners should be appointed in counties, cities and separate towns by the municipal councils and should have the power of appointing Licence Inspectors.

Mr. Lauder wished the House to declare that 'the centralizing policy of the Government in usurping, for partisan purposes, power heretofore possessed by the municipalities has struck a serious blow at the principles of local government under the municipal system'; and Mr. Solomon White, of North Essex, demanded for 'the sons of mechanics and others not now entrusted with the franchise the same privileges as have been conferred on farmers' sons.'

All these resolutions received precisely the same number of votes as those above mentioned, *i.e.*, 25; but a resolution by Mr. Nairn, that 'the Liberal party of this province stands pledged to extend the franchise; and that such extension, in order to prove satisfactory, must, under proper checks and safeguards, give the right to vote to all classes who can fairly and reasonably claim to be endowed therewith,' was carried by 44 to 22, or two to one.

CHAPTER XIII

PROVINCIAL RIGHTS—THE BRIBERY PLOT.

THE general elections were held on February 27, 1883, immediately after the Session. The result was a great disappointment to the Liberal party. According to the returns, as given in Morgan's *Annual Register*, there were elected 50 Liberals and 38 Conservatives, giving Mr. Mowat's Administration a majority of only about half what they had been able to command during the previous Legislature. The Premier himself was elected for the second time by acclamation in North Oxford, the only other uncontested elections being those of Mr. James Young (North Brant), Mr. Hamilton P. O'Connor, Q.C. (South Bruce), and Mr. W. R. Meredith, Q.C. (London). The list of Liberal defeats is a long one. Mr. Appleby was beaten in East Hastings, Mr. Bettes in Muskoka, Mr. Deroche in Addington, Mr. J. C. Field in West Northumberland, Mr. Hay in North Perth, Mr. Hawley in Lennox, Mr. Hunter in South Grey, Mr. Nairn in East Elgin, Mr. Peck in North Victoria, Dr. Robertson in Halton, Dr. Robinson in Cardwell, Mr. Striker in Prince Edward and Mr. Watterworth in West Middlesex, while in West York Major John Gray succeeded Mr. Peter Patterson. 1883

Against these, the Liberals could only count as gains East Middlesex, where Mr. Donald

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Mackenzie succeeded Mr. Tooley; Wentworth, where Mr. Awrey defeated Mr. Carpenter; and West Simcoe, where Mr. Orson J. Phelps beat Mr. Thomas Long.

The causes which have been assigned to account for this result seem to be inadequate. It is true that the Opposition, without abandoning the old, and now somewhat hackneyed, theme of governmental extravagance, introduced in this election a variation upon it by the first of those appeals to religious prejudice which they repeated with less success in the subsequent elections of 1886 and 1890. In a campaign sheet entitled *Facts for the Irish Electors* it was declared that 'the Catholics of this province can never have any confidence in the Hon. Oliver Mowat, who has always been their enemy'; and that their true friend was Mr. W. R. Meredith, the leader of the local Opposition. 'Though few men,' said the writer of this document, 'will care to raise what is wrongly called "the sectarian cry," it is desirable in this crisis that that cry should be raised. It is necessary, for our own good, that we should all know the party that has been the faithful sentinel of our interests, in order that we Catholics may act on the good old maxim of one good turn deserving another.' It is true also that eight months earlier, in the Dominion elections of June, 1882, the Conservative party, under the leadership of Sir John Macdonald, had carried every province except Manitoba, securing in Ontario 54 out of 92 seats; but, under similar circumstances, in June, 1879,

Mr. Mowat's Administration had obtained a majority of 25 in Ontario, although Sir John, in the preceding September, had carried the province by a plurality of 30 seats. It has been suggested, therefore, and not without probability, that other and more sinister influences were exerted at this election to secure the defeat of the Mowat Government; and the exposure during the succeeding Session of the notorious bribery plot may give some clue to their nature. 1883

During the recess the Provincial Treasurer, the Hon. S. C. Wood, resigned, being succeeded by Mr. James Young, of South Brant, who was, however, compelled by ill health to resign the office in November following. Mr. Young's place was taken by Mr. A. M. Ross, member for West Huron, who continued to be Provincial Treasurer until June 14, 1890.

In June of this year Mr. Mowat, accompanied by the Deputy Attorney-General, Mr. John R. Cartwright, Q.C., went to England to argue the Escheat Case (*The Queen* v. *Mercer*) before the Judicial Committee of the Privy Council. The argument took place in July, and as we have already seen,[1] the decision was in favour of the province. From London Mr. Mowat writes to his brother John :—

'Aug. 9, 1883.

'My third visit to the old land is drawing to a close. I sailed by the *Parisian* on June 16, the first time of my crossing by the Allan line. The

[1] *Ante*, p. 242.

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trip was accomplished, like the preceding ones, without discomfort. I have seen a little more of England and Scotland this year than on my previous visits. I went for the first time to Aberdeen, and amongst other things I saw with interest the tomb of Prof. Campbell.[1] The inscription contains no reference to his Canadian life. I also went out to Turriff to visit Dr. Cruikshank[2] and accepted his invitation to stay at the manse. I was there from Saturday till Monday. Dr. Cruikshank is wonderfully well and strong, considering his age—upwards of eighty. He has no assistant, and has a large parish and congregation. There are, he told me, 1,300 on his communion roll, and there were a thousand present at his last communion. He talked with great pleasure about his old pupils at Kingston and the people and events of his time in Canada. It was grateful to me to listen to his references to our parents. His sermons were excellent—earnest, evangelical, practical and eloquent. He showed me an address which his pupils gave him when he was leaving Kingston. I read the names with much interest. Most of those who signed are since dead. A few I had forgotten till he reminded me who they were. I did not go to Caithness this time as I had intended. I was detained in London so long that I found it impossible to do so without forgoing other engagements, not easy to be dis-

[1] One of the first professors in Queen's University. See *ante*, p. 29.

[2] Formerly one of his schoolmasters at Kingston. See *ante*, p. 11.

regarded. I regret this very much, as I did want to attend a service in the Dunnet parish church, where our grandparents and their ancestors are buried.' 1883

Early in the Session of 1883 it had become painfully evident that the Hon. Adam Crooks, who had served the province with so much energy and success—first as Attorney-General in the Administration of Mr. Blake, and afterwards as Provincial Treasurer and Minister of Education in that of Mr. Mowat—was suffering from severe mental trouble. He voted on only one division, viz.: that of Jan. 11, 1883, and on returning home that night was seized with an affection of the brain which rendered impossible his return to public life. The portfolio of Education thus became vacant, and—though I have not been able to find any reference thereto among Mr. Mowat's papers or correspondence—it appears from the biography of the Rev. Principal Grant that it was offered to him and that he declined it.

Fortunately, however, Mr. Mowat was able to secure the services of the Hon. George W. Ross, who had recently lost his seat for West Middlesex in the Dominion House. Mr. Ross was thoroughly familiar with our educational system. He had attended the Normal School at Toronto, had been a public school teacher for ten years, was afterwards an Inspector of public schools for the county of Lambton, and subsequently for Petrolea and Strathroy. He had taken a leading part in the creation of the County Model School system,

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and had filled for a time the position of Inspector of these schools. From 1876 to 1880 he was a member of the Central Committee of Examiners. An able and vigorous speaker and an experienced parliamentarian, his acceptance of the office on Nov. 23, 1883, gave new strength to the Government and fresh confidence to the teaching profession; and his administration of the Department continued until Oct. 21, 1899, when he became Premier of Ontario, in succession to the Hon. A. S. Hardy.

The Session of 1884 began on January 25 and ended on March 25. The Speech from the Throne referred to the decision of the Judicial Committee of the Privy Council in *Hodge* v. *The Queen*, upholding the right of provincial legislatures to regulate the traffic in intoxicating drinks. 'The judgements in this case and in the insurance cases,' said His Honour, 'and the decision that lands escheating to the Crown for want of heirs are the property of the province, taken in connexion with the observations made by the learned Judges in disposing of these cases, have had a re-assuring effect on the public mind, by showing that the federal principle embodied in the British North America Act and the autonomy which it was intended thereby to secure for the individual provinces, are likely to be safe in the hands of the Court of final resort in constitutional questions.' Additional point was afterwards given to these remarks by the decision of the Judicial

Committee in the case of the 'McCarthy Act,' the history of which, as Mr. Kipling observes, 'is another story'; but one that may as well be told here. 1883

Sir John Macdonald, addressing a public meeting at Yorkville on June 1, 1882, had been asked in writing, 'What is your opinion of the constitutionality of the Ontario Licence Act [the 'Crooks Act']?' Sir John replied that since Confederation his decision as Minister of Justice had often been given on constitutional questions; and in no single case had his judgement been reversed. He believed the Act was not worth the paper it was written on. The whole system of the Government appointing Licence Inspectors, to compel men to vote under penalty of losing their licences was wrong and indefensible. When the licensed victuallers brought the matter before the Courts, it would be decided that the Act was a usurpation and had no force whatever; he was surprised that the question had not been pressed long before this. If he carried the country—as he would do—(Cheers)—he would tell Mr. Mowat, that little tyrant who had attempted to control public opinion by getting hold of every office from that of a Division Court bailiff to a tavern-keeper, that he would get a Bill passed at Ottawa returning to the municipalities the power taken away from them by the Licence Act.'[1]

Sir John was as good as his word, and at the very next Session of the Dominion Parliament

[1] Toronto *Mail*, June 2, 1882.

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was passed 'The Liquor Licence Act of 1883,' better known as the 'McCarthy Act.' It divided Canada into licence districts, for each of which there was to be a Board of Licence Commissioners, a Chief Inspector of Licences, and one or more Inspectors to be appointed by the Board of Licence Commissioners. The licences issuable were to be of five kinds, viz.: hotel, saloon, shop, vessel and wholesale licences; and the machinery for their issue was substantially similar to that of the Ontario Act. There were also certain provisions regarding adulteration, not in the provincial Statute, and a local option clause, less simple than that contained in the Ontario Licence Act.

The question of the validity of this measure was subsequently argued before the Supreme Court of Canada, at the instance of the Dominion Government; and a majority of the Judges of that Court determined that the 'McCarthy Act' was *ultra vires* of the federal Parliament, except in so far as it related to vessel and wholesale licences, and to the carrying into effect of the Canada Temperance Act of 1878, better known as the 'Scott Act.' One of the Judges (Mr. Justice Henry) was of opinion that the Act was altogether *ultra vires*.

Against this decision the Dominion Government appealed to the Judicial Committee of the Privy Council, which unanimously affirmed the decision of Mr. Justice Henry, that the Act was wholly *ultra vires*. 'The provisions relating to adulteration,' said their Lordships, 'if separated in their operations from the rest of the Act, would

be within the authority of Parliament; but as, in their Lordships' opinion, they cannot be so separated, their Lordships are not prepared to report to your Majesty that any part of the Act is within such authority.' 1884

The result was, therefore, that the 'great constitutional lawyer' whose 'judgement on constitutional questions had never been reversed,' found himself once more beaten by the 'little tyrant,' whose Ontario Licensing Acts had already been held valid by the highest Court in the Empire.

The Legislature now proceeded to amend the 'Crooks Act' by reducing the number of saloon licences issuable in any municipality according to its population, and affording further security against the establishment of licensed houses without warning having been first given to the residents of the locality. The principle of local option was introduced by empowering the majority of the electors of any polling subdivision to forbid, by means of a sufficiently signed petition to the Licence Commissioners, the granting of any new licences or the transfer of an old one. The complete separation of the liquor traffic from all other traffic in any licensed shop was made compulsory; the colourable sale of liquors by clubs incorporated under the 'Act respecting Benevolent, Provident and other societies' was absolutely prohibited, and authority was given to Justices of the Peace and Police Magistrates, and to the relatives of any habitual drunkard, to forbid a licence-holder to

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sell liquor to any such drunkard for one year. Licences on ferry boats were abolished, and the fees charged for the various kinds of licences were largely increased.

As in the two preceding Sessions, the subject of provincial rights was again the chief battle-ground between the two contending parties in the Legislature, the Opposition defending with zeal, if not with wisdom, the interference of the Ottawa Government in the domestic concerns of Ontario. The 'Rivers and Streams Act,' which had now been declared by the Judicial Committee of the Privy Council to be within the legislative jurisdiction of Ontario, was again introduced by the Government and passed for the fourth and last time, in spite of several adverse motions by the Opposition.

In 1883, the Dominion Parliament had passed an Act declaring a number of provincial railways to be 'works for the general advantage of Canada,' in order thus to transfer them from provincial to federal jurisdiction. In view of this, the Hon. Mr. Pardee moved a series of resolutions, declaring that the railways in question were local and provincial in their character, that they had received provincial aid to the amount of over $6,000,000, and municipal aid to the extent of over $8,000,000, on the faith and understanding that they were and would continue to be provincial railways; that, under these circumstances, the Act referred to had been passed in disregard of provincial

rights and in spite of the protest of the Ontario Legislature, as expressed in the resolutions passed in 1882,[1] and that the action of the federal Parliament was a violation of the spirit and a perversion of the purpose of the British North America Act, against which the House desired to protest. Mr. Meredith—as the champion of the federal authorities—moved in amendment to substitute a resolution that the powers of the federal Parliament in this respect should not be exercised except in regard to provincial railways forming branches of the main lines of railways under Dominion jurisdiction, and that the provincial Government should have an opportunity to be heard in opposition to any proposed transfer. The Hon. Mr. Hardy moved a further amendment, restoring Mr. Pardee's resolution, with an additional clause, insisting that provincial assent should be a condition precedent to the declaration by the federal Parliament that any provincial railway was a work for the general advantage of Canada; and the original motion as thus amended was carried. 1884

Among the more important Government measures of this Session was an Act extending the rights of married women so as to provide that every woman married after July 1, 1884, should be entitled to hold as her separate property all real and personal property belonging to her at the time of marriage, or afterwards acquired in any employment, trade or occupation carried on by her separately from the husband, or by the exercise

[1] See *ante*, p 349.

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of any literary, artistic or scientific skill. The Act also declared that contracts by married women should bind their separate property, unless the contrary intention was definitely expressed. Another Act secured to wives and children the benefit of life insurances effected by the husband or father; and the Municipal Act was amended so as to permit widows and unmarried women to vote at municipal elections, if they possessed the necessary qualification in respect of real property or income.

But the sensation of the Session was the discovery and exposure of a plot to defeat the Government by bribing a sufficient number of its supporters to secure a vote of want of confidence. On March 17, 1884, at the request of the Premier, the Speaker read to the House letters which he had received from Mr. Robert McKim, member for West Wellington, and Mr. W. D. Balfour, member for South Essex, enclosing, in the first case, one thousand dollars, and in the second, eight hundred dollars, which the writers declared to have been given to them by one John A. Wilkinson, in order to induce them to vote against the Government. The Premier then stated to the House that he was credibly informed and believed that several persons, including the said John A. Wilkinson, Christopher W. Bunting, managing editor of the *Mail* newspaper, Edward Meek, a Toronto barrister, F. S. Kirkland, a Wisconsin lawyer and an applicant for certain concessions respecting timber and mining lands, and one Frederick Stimson,

alias Lynch, were engaged in a conspiracy to defeat the Government by bribing members who had been elected to support it; and he moved that it be referred to the Standing Committee on Privileges and Elections, to inquire into these charges and report thereon. Kirkland had a few minutes before been arrested in the lobby of the House, and Wilkinson at the Walker House. Stimson, *alias* Lynch, could not be found. 1884

The members of the Opposition disclaimed all knowledge of the alleged conspiracy; and Mr. Meredith said they would be glad to assist the Government in securing the fullest investigation. The Attorney-General's motion was unanimously carried, and the Committee on Privileges and Elections sat for the next five days taking evidence. They then reported to the House that it would be impossible for them to conclude their investigation before the end of the Session, and recommended the appointment of a Commission of Judges to continue it. In this recommendation the House concurred, and a Commission was accordingly issued to the Hon. Mr. Justice Proudfoot, of the Chancery Division of the High Court of Justice, Judge E. J. Senkler, of St. Catharines, and the late Judge Alexander Scott, of Brampton.

The report of the Commission was made to the Lieutenant-Governor in January, 1885. Judge Scott was of opinion that only the proceedings and evidence should be reported, without the conclusions of the Judges thereon; but the other members of the Commission thought otherwise, and

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their report appears in full in the Sessional Papers of 1885 (No. 9). They found, substantially, that during the debate on the Address, which lasted from January 23 to February 6, Wilkinson, Meek and Bunting had attempted, by offers of money and of offices in the Northwest Territories, to induce Robert McKim, member for West Wellington, and John Cascaden, member for West Elgin, to vote against the Government on the Address; that this having failed, another attempt was made toward the end of the Session, not only as to Mr. McKim, but also as to Messrs. Dowling (South Renfrew), Balfour (South Essex), and Lyon (Algoma), by Wilkinson, Meek and Bunting, in conjunction with Kirkland and a person who passed by the name of Lynch, but whose real name was Stimson; that Balfour was offered a shrievalty or registrarship in the Northwest Territories, with one thousand dollars or twelve hundred dollars down as a guarantee, and another thousand after the vote was given, and that he was paid eight hundred dollars on account; that McKim received one thousand dollars from Wilkinson; that Lyon was promised the withdrawal of a petition which had been filed against his election; and Dowling, that a similar petition against him would be withdrawn, his expenses in connection therewith recouped, and that he should receive, for voting against the Government two thousand dollars; and, if he resigned his seat, a further sum of two thousand or three thousand dollars, provided he did not interfere against the candidate who should run.

The Commissioners further found that no advances were made by McKim, Cascaden, Balfour, Dowling or Lyon, to those who were endeavouring to corrupt them, but that all the advances were made to them, and that they suffered them to be made with a view of procuring evidence sufficient to prove the offence of a conspiracy to bribe them. They further found that there appeared to be no reason for supposing that any of the Conservative members of the House of Assembly had attempted to use improper means to induce members on the other side of the House to change their votes. 1884

Messrs. Bunting, Kirkland, Meek and Wilkinson were committed for trial by the Police Magistrate of Toronto, on a charge of conspiring to corrupt members of the Legislature, and were tried at the Assizes for the county of York. The grand jury found a true bill; but the presiding Judge (Chief Justice Adam Wilson) charged strongly in favour of the defendants, and the jury brought in a verdict of acquittal.

The debate on the Premier's motion to refer the Bribery Case to the Committee on Privileges and Elections, gave coinage to an expression which afterwards became well known, if not famous.

The Hon. C. F. Fraser, in his energetic way, referred to the detection of 'this prowling brood of bribers, hatched under the eaves of the *Mail* building.' In extending a reporter's notes the adjective became 'brawling' instead of 'prowling.' The alliterative phrase caught the public ear, though it is not so apt as the one actually used by the Commissioner of Public Works.

CHAPTER XIV

THE BOUNDARY DISPUTE (1) THE AWARD

THUS far we have been considering Mr. Mowat's career chiefly in relation to the domestic affairs of the province, which, in fact, though not in name, he governed so long. 1874-84

The extension of the franchise, the introduction of the ballot, the reform of the laws relating to the rights and privileges of the Legislative Assembly, to elections and controverted elections (provincial and municipal), the unification of the Courts of Law and Equity, the simplifying and cheapening of legal proceedings, the improvement of our municipal and school systems, the amendment and consolidation of the statute law, the regulation and control of the liquor traffic, the betterment of the legal status of married women, the protection of the rights of wage-earners—these and a hundred more were matters relating to the internal economy of Ontario.

But it is time now to consider the work which he accomplished in a larger sphere and against more tremendous odds—to speak of the battle which he fought for nearly twenty years to gain for Ontario her rightful place among the provinces of the Dominion, and of the labour, the skill, the tact and generalship which enabled him, in spite of many obstacles, to secure for his native prov-

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ince a new territory, larger in extent than that which she had formerly been supposed to possess; a kingdom rich in yet uncounted stores of wealth in the forest, the river and the mine.

It is not only upon his triumphs as a provincial politician, legislator and administrator—though these alone would have been enough—but upon the victory he won as a lawyer, diplomatist and statesman, that Sir Oliver Mowat will chiefly be remembered by the people of Ontario.

It may seem somewhat strange to the next generation, that though the province of Upper Canada was formed in 1791, by what we have learned to call 'The Constitutional Act' (31 Geo. III, c. 31), no serious attempt to define its limits was made until after Confederation, when Canada had acquired, or was about to acquire, the title of the Hudson's Bay Company to Rupert's Land and the Northwest Territories. On Nov. 3, 1869, the Hon. W. P. Howland, Lieutenant-Governor of Ontario, in opening the third Session of the first Ontario Legislature, said:—'It having been officially announced that the Northwest Territory, lately under the administration of the Hudson's Bay Company, is about to be annexed to the Dominion of Canada, ... I venture to suggest the propriety of your providing for an early ascertainment of the boundary line between that territory and this province.'

Accordingly, in 1871 it was arranged that the task of delimiting the northerly and westerly boundaries of the province should be entrusted

to two Commissioners, one for Ontario and the other for the Dominion, each receiving his instructions from the Government that appointed him. The Commissioner chosen by the Dominion Government was Mr. Eugéne E. Taché of Quebec; the Commissioner for Ontario, the Hon. William McDougall, C.B. At that time—Sir John A. Macdonald being Premier of Canada and Mr. John Sandfield Macdonald Premier of Ontario—it was not expected that any difference of opinion would arise, and accordingly no provision was made for the appointment of a third person as arbitrator or umpire. 1871

In December, 1871, a change of Government took place in Ontario, and the Hon. Edward Blake succeeded the Hon. J. S. Macdonald as Premier.

On March 11, 1872, Mr. Blake became aware that the Dominion Commissioner (Mr. Taché) had been instructed to locate the western limit of Ontario at the point in Lake Superior where the international boundary between Canada and the United States would be intersected by a line drawn due north from the junction of the north bank of the Ohio with the east bank of the Mississippi River,—*i.e.*, in longitude west from Greenwich 89° 9′ 30,″—and 'to adopt as the northern boundary of the province the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the Great Lakes.' The Dominion Government, acting upon a report from their Surveyor-General, Lieut.-Col. J. S. Dennis, claimed

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that, under the terms of the 'Quebec Act' (14 George III, c. 83) these were the limits of Ontario; but Mr. Blake at once dissented from this proposition, and in a dispatch dated April 19, 1872, claimed a larger area for the province.

He said:—'The boundary line of Ontario is the international boundary[1] from the mouth of the Pigeon River on Lake Superior,[2] to a point west of the Lake of the Woods, where the international boundary line will be intersected by a line drawn north from *the source of the Mississippi River*; thence north to the southern boundary of the Hudson's Bay Territories; thence along the southern boundary of these Territories to the point where that boundary would be intersected by a line drawn north from the head of Lake Temiscamingue.'

To this Sir John Macdonald replied (May 1, 1872), suggesting 'that the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council, with a view to the settlement, by a judgement of that tribunal, of the western and northern boundaries of Ontario.'

Mr. Blake, answering this dispatch, remarked (May 31, 1872) :—'The solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time. A more satisfactory way of settling the question . . . .

[1] Between Canada and the United States. [2] Westward.

would be by reference to a Commission sitting on this side of the Atlantic, and without, for the present, dealing definitely with the proposal of the Government of Canada for a reference to the Judicial Committee, this counter-suggestion is made to that Government.' 1871-4

Mr. Blake's suggestion was not adopted by the Dominion Government, and matters remained *in statu quo* until 1874, when, on the motion of Attorney-General Mowat, the Ontario Legislature (March 23) unanimously resolved that 'this House approves of the reference of the question of the western boundary of this province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council shall see fit.'

Shortly afterwards, the Hon. Adam Crooks, acting for the Government of Ontario, had an interview with the Hon. Alexander Mackenzie, then Premier of Canada, and several other members of the Dominion Government, and it was agreed that the boundary question should be referred to arbitration, the Dominion to appoint one arbitrator, the province another, and these two to name a third 'not being a resident of Canada,' and that 'the determination of a majority of such referees *should be final and conclusive upon the limits to be taken as and for such boundaries.*

The arbitrators appointed were:—by the Dominion, the Hon. L. A. Wilmot, late Lieutenant-Governor of New Brunswick, and, by Ontario, the Hon. William Buell Richards, Chief Justice of Ontario;

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and Orders-in-Council were passed, both at Ottawa and Toronto, agreeing to the arbitration, naming the arbitrators, giving them authority to choose a third person 'not being a resident of Canada' as third arbitrator, and agreeing that 'the determination of a majority of such three referees *shall be final and conclusive* upon the limits to be taken as and for such boundaries.'

Both parties to the arbitration proceeded with the collection of evidence, and agents were sent to London, Paris, Albany and Washington, to search for records, maps, treaties, etc., in support of their respective contentions. The preparation of the case for the Dominion was entrusted to Mr. J. D. Armour, Q.C., and that for the province to the Hon. David Mills, LL.B., Mr. Thomas Hodgins, Q.C., and Lieut.-Col. T. C. Scoble. Meanwhile the Hon. L. A. Wilmot died, and the Hon. W. B. Richards, having been appointed Chief Justice of Canada, resigned his position as arbitrator. It therefore became necessary for both the Dominion and the province to appoint new arbitrators, and accordingly the Hon. Sir Francis Hincks was chosen for the Dominion, and the Hon. R. A. Harrison, Chief Justice of Ontario, took the place of Sir W. B. Richards. They chose as the third arbitrator the Right Hon. Sir Edward Thornton, G.C.B., then Her Majesty's Minister at Washington; and the three appointments so made were ratified by Orders-in-Council at Ottawa and Toronto, each of which distinctly declared that the award of the three

arbitrators, or a majority of them, in the matter of the said boundaries should be final and conclusive. 1878

On August 1, 2 and 3, 1878, the case was argued before the arbitrators by Mr. Hugh MacMahon, Q.C., of London, Ontario, and Mr. E. C. Monk, Q.C., of Montreal, for the Dominion, and by the Hon. Attorney-General Mowat, Q.C., and Mr. Thomas Hodgins, Q.C., for the province. The evidence had been prepared by both parties in a form convenient for reference, and sent to the arbitrators some time before the argument. It had evidently been carefully perused by them, as their questions to counsel clearly indicate, and, after hearing the argument, they made a unanimous award[1] which more than doubled the territory which, according to the Dominion's contention, was included within the limits of Ontario. The western boundary of the province, instead of being placed—as Sir John Macdonald had claimed that it should be—in longitude 89° 9′ 30″ west from Greenwich—*i.e.*, 6½ miles east of Port Arthur, was fixed more than three hundred miles further west, viz.: in longitude 95° 14′ 38″ W.; and the northern boundary, instead of being 'the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the Great Lakes,—as contended by Sir John Macdonald—was placed, on the west, at the Winnipeg River, 58½ miles north of the international boundary; and, on the east, at the mouth of the

[1] See the text of the Award, *post*, Appendix VIII.

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Albany River in James's Bay, 332 miles north of the 'height of land,' the boundary line between these two points being the natural one formed by the Albany and the English Rivers with their intervening lakes (Lac Seul, Lac St. Joseph, etc.)[1] The effect of this decision was to increase the area of the province from 116,782 to 260,862 square miles.[2]

The extent of territory covered by the award was, therefore, 144,080 square miles—*i.e.*, it was larger by 24,000 miles than the British Islands, by 33,400 square miles than the kingdom of Italy, and three times as large as the State of New York.

On October 17, 1878, a change of government took place at Ottawa, and Sir John A. Macdonald became Premier and Minister of the Interior. A few weeks afterwards a map was published, 'By order of the Honourable the Minister of the Interior,' marking the boundaries of Ontario precisely as they had been determined by the arbi-

[1] See map at the end of this book.

[2] According to a note appended at the time to the map used on the argument before the Judicial Committee of the Privy Council in 1884, the estimated area of Ontario, as limited by the contention of Manitoba and the Dominion, is given as 101,733 square miles, and that of the awarded territory as 95,267 square miles, making the total area of the province exactly 200,000 square miles. These figures are stated to be taken from the Census Report of 1881, Vol. 1, pp. 82, 96. They were used by counsel on both sides in the argument before the Privy Council; but it now appears that on the old maps, according to which they were calculated, the position of the height of land is incorrectly given; and the Dominion Geographer, Mr. James White, F.R.G.S., states that according to the latest maps the figures in the text are correct. They do not include those portions of the Great Lakes which come within the boundaries of the province. (See Census Report 1901, pp. 22, 24, 25, 52, 88.) Mr. George B. Kirkpatrick, Director of Surveys for Ontario, still adheres to the original figures given in the map of 1884, making the area of the province exactly 200,000 square miles.

trators. The province of Ontario accepted the award by 42 V., c. 2 (March 11, 1879), but no corresponding action was taken by the Dominion Government, though Mr. Mowat, by dispatches dated December 31, 1878, and September 23 and December 29, 1879, continued to press upon Sir John Macdonald the desirability of immediate legislation for that purpose, especially in view of the influx of settlers into New Ontario. The receipt of these dispatches was formally acknowledged, but nothing more was done till 1880, when—after Sir John Macdonald had stated that the Government did not intend to propose legislation ratifying the award—a special Committee of the House of Commons reported, by a majority of five, that in their opinion the award did not describe the true boundaries of Ontario. Sir John Macdonald declared that the arbitrators had 'merely adopted a conventional line,' and that they 'did not affect to set up the true boundaries according to law'; but this was positively and emphatically denied by the Hon. Sir Francis Hincks, in a lecture delivered on May 6, 1881, at the Education Department in Toronto. He said :— 1878-81

'The duty of the arbitrators was to find the *true boundaries* of Ontario. They are charged with declaring "a mere conventional or convenient boundary." The sole ground for this charge is that the line connecting the most north-easterly and most north-westerly points,[1] being

[1] Viz.: the median line of the English River, Lac Seul, Lake St. Joseph and the Albany River.

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a natural boundary, was adopted for the sake of convenience . . . . After their decision as to the south-westerly and north-easterly boundaries had become known, they were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior,[1] to connect the two points by a natural boundary; and, being aware of the fact that the Albany River had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they adopted it. It is not a little singular that the award was promptly accepted by Ontario, although the only questions of doubt were decided in favour of the Dominion, both on the west and north. The doubts were whether Ontario should not have had more territory.'

And Sir Francis quoted from a letter written by Chief Justice Harrison shortly before his death:—

'I believe there never was an award made in a matter of such importance that is so little open to honest criticism . . . . Since the award was made I have received from Judge Macdonald of Guelph an old lithographed map, evidently made long before the Constitutional Act of 1791, which indicates the northern boundary of Upper Canada to be on the precise line where we have placed it. Our duty was judicial: we had nothing to do with questions of policy. By the light of the evidence adduced and the arguments pro-

[1] Lieut. Col. Dennis was at that time Surveyor-General for Canada; and it was upon his report that Sir John Macdonald had acted in placing the western boundary of Ontario on the meridian of the confluence of the Ohio and Mississippi Rivers. See *ante*, p 371.

pounded, we unanimously decided upon certain boundaries for the north and west of the province.' 1878-81

During the Session of the Ontario Legislature in 1880 the Attorney-General moved a series of resolutions, reciting in detail the steps thus far taken in regard to the Boundary Dispute, the unanimous award of the arbitrators and the action, (or rather the inaction), of the Dominion Government, concluding with these words :—

'(1) The House regrets that notwithstanding the joint and concurrent action of the respective Governments in appointing the arbitrators aforesaid, and notwithstanding the unanimous award of the said arbitrators, the Government of Canada has hitherto failed to recognize the validity of the said award, and no legislation has been submitted to Parliament by the said Government for the purpose of confirming the said award.

'(2) In the opinion of this House it is the duty of the Government of Ontario to take such steps as may be necessary to provide for the due administration of justice in the northerly and westerly parts of Ontario, as defined by the said award . . . . and that the rights of this province *as determined and declared by the award aforesaid* should be firmly maintained.

'(3) This House will at all times give its cordial support to the assertion by the Government of Ontario of the just claims and rights of this province, and to all necessary or proper measures

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to vindicate such just claims and rights *and to sustain the award of the arbitrators* as aforesaid.'

The resolutions were carried by a vote of 64 to 1, Mr. Meredith and the entire Opposition voting in the majority. The only vote against the resolutions was given by Mr. Miller (Independent), member for Muskoka and Parry Sound.

Again in the Session of 1881, a series of resolutions, prefaced by a similar recital, declaring that 'this House re-affirms its determination to give its cordial support to the Government of Ontario in any steps it may be necessary to take *to sustain the award, and to assert and maintain the just rights of the province* is thereby declared and determined,' was carried by a vote of 75 to 1, Mr. Meredith and all his followers, except Mr. Baskerville (Ottawa), voting in the affirmative.

On the following day (March 4, 1881) a copy of these resolutions was forwarded by the Lieutenant-Governor of Ontario to the Secretary of State at Ottawa, accompanied by the following letter :—

'Toronto, March 4, 1881.

'I have the honour herewith to transmit a copy of the resolutions adopted yesterday by the Legislature of this province with regard to the delay on the part of the Government of Canada in giving effect to the award of the arbitrators appointed to determine the northerly and westerly boundaries of Ontario. For the resolutions seventy-five members voted "yea," while but one voted "nay." In view of the interests concerned

and of the unanimity of the Legislature now for the second time recorded, my Government express the hope that the present Session of the Dominion Parliament will not be permitted to close without legislation confirming the award.' To which the Under-Secretary replied, simply acknowledging the receipt of His Honour's dispatch. 1881

The 'hope' thus officially expressed by the Lieutenant-Governor of Ontario that the award would be adopted by the Dominion Parliament during its then current Session was destined to disappointment. On the contrary, steps had already been taken towards repudiating it and bringing the whole matter afresh into controversy.

The province of Manitoba, as constituted by the Dominion Act of 1870 (33 Vict., c. 3), extended northward from the international boundary to the parallel of 50° 30′, and from the meridian of 96° to 99° W. These limits seem to have been perfectly satisfactory to the Government and people of the province, for in 1877 its Legislature passed an Act (40 Vict. c. 2), asking the Dominion to confirm, establish and define them by reference to the ranges and townships of the province, which had by that time been surveyed. The federal Parliament did not act at once upon this suggestion. The award was made in 1878, and three years later at a short session of the Manitoba Legislature (Dec. 16-23, 1881), called for this special purpose, a new Act was passed providing for a large ex-

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tension of the boundaries of the province. It was now proposed[1] that these should be :—On the south the international boundary between Canada and the United States; on the west the meridian of 101° 25′ W.; on the north the parallel of 52° 50′ N., and on the east the easterly limit of the District of Keewatin, as defined by the Dominion Act (39 Vict., c. 21), viz.: 'the westerly boundary of the province of Ontario.' I have reason to know that this Act was introduced and passed under direct inspiration from the Ottawa authorities; and on March 21, 1881, the Parliament of Canada, at the instance of the Government, confirmed it by 44 Vict., c. 14, increasing the boundaries of Manitoba to the limits suggested in the provincial Act, and declaring that 'all the land embraced by the above description, not now within the province of Manitoba, shall be added thereto, and shall form and be the province of Manitoba.'

This adroit move on the part of Sir John Macdonald and his Government immensely complicated the situation. It brought the two provinces into contact—in every sense of the word. Thenceforward it became the interest of Manitoba that the award should be ignored, that 'the western boundary of Ontario' should be placed as far east and its northern boundary as far south as possible, and that Manitoba, and not Ontario, should

[1] Under the British North America Act, 1871 (34-35 Vict. c. 28) the Dominion Parliament has authority, with the consent of the Legislature of any province, to increase, diminish or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by its Legislature.

exercise jurisdiction over what was known as the 'disputed territory,' viz.: the area included between the meridians of 89° 9′ 30″ and 96° W. 1881

Moreover, it rendered more difficult any settlement of the Boundary Dispute by necessitating the consent of a third party to any statement of the case for judicial determination.

The 'Manitoba Act,' as passed by the Parliament of Canada, provided that it should not go into force until proclaimed by the Governor-General in Council; and before this was done Mr. Mowat addressed a strong dispatch to the Secretary of State, urging that the Act should not be thus proclaimed. He said (speaking by the mouth of the Lieutenant-Governor) :—

'Hitherto the assent of the Dominion of Canada to a settlement of the Boundary Question has alone been necessary. The Dominion has no constitutional interest in withholding that assent; —but by the proposed measure another province will be given a new, direct, and strong interest adverse to that of Ontario, and will be invited to claim jurisdiction over every portion of the territory in dispute. The proposed measure will make the consent of the province of Manitoba, as well as that of the Government at Ottawa, essential hereafter to any settlement, or even to any step toward the settlement of the existing controversy, and will place that province in such a position as may make an amicable settlement almost, if not quite, impossible . . . . In short, my Government look upon the proposed measure as calcu-

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lated to aggravate all existing difficulties and to prove most prejudicial to the accord and harmony which should prevail between the provinces of the Dominion.'

The Act was nevertheless brought into force on and from July 1, 1881, by a proclamation of the Governor-General issued on June 13, 1881.[1]

The question has often been asked: Why did Sir John Macdonald—himself an Ontario man—thus flout his own province, repudiate an award made by Sir Francis Hincks, one of his chosen colleagues, Chief Justice Harrison, one of his most loyal supporters, and Sir Edward Thornton, whose fairness and ability no one could doubt? Why did he recede in 1881 from the position which two members of his Cabinet—Sir George Cartier and the Hon. William McDougall—had taken, doubtless with his approval, in 1869, when, acting as the accredited agents of the Canadian Government in the negotiations with the Hudson's Bay Company, they averred in their dispatch to the Colonial Office that 'the boundaries of Upper Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include *all the territory to the westward and southward of the boundary line of Hudson's Bay to the utmost extent of the country commonly called or known by the name of Canada*,' and that 'no impartial investigator of the evidence can doubt that it (Upper Canada) extended to and *included the country between the Lake of the Woods and Red River*.'

[1] Dominion Statutes, 1882, p. xxii-xxiv.

The answer is plain. First, it was not Sir John Macdonald alone, but the Dominion Government, which executed this *volte face*. Sir George Cartier was dead, and a new king had arisen who knew not Joseph. The Secretary of State for Canada, the Hon. J. A. Mousseau, in a speech at Ste. Helène in his own constituency (Bagot), in 1882, said—or is reported by the *Montreal Gazette* to have said:— 1881

'You have heard of the great question of the Ontario boundary. It will not be necessary for me to go into all the details of this question. The Government of Mr. Mackenzie submitted this question to arbitration; and in 1878 the arbitrators decided that Ontario should obtain an additional area of 62,000,000 acres. When we came into power in 1878 we refused to accept this decision, and offered to refer the case to the Privy Council. When at St. Jèrome in 1878 with the Hon. Mr. Masson, I laid down the condition upon which we would hold our positions as members of the federal Cabinet. I said that if the province of Ontario is to acquire an additional territory of 62,000,000 acres more than she was given under the B. N. A. Act, *the province of Quebec would demand an equivalent.*'

And Mr. Christopher Robinson, K.C., in arguing the case of the Dominion before the Privy Council in 1884, frankly stated the political situation thus :—

'It is necessary that we should endeavour to hold an even hand as between the different provinces. Your Lordships are perfectly aware

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that Confederation was formed under a great deal of difficulty and that it is carried on under some difficulty. Your Lordships are aware that old Canada contained one province which is to a very large extent subject to different laws, peopled by people of a different nationality, and of a different religion from the other provinces; and, from the commencement of Confederation, the great difficulty has been, not to say the jealousy, but the difficulty of *reconciling the rights to which they are entitled with other matters.*

Again, Manitoba was at that time a French-Canadian province, governed by the Norquay-Royal Administration. It sent to Ottawa three members supporting the Government, and only one supporter of the Opposition; while in Ontario, west of the city of Toronto and the county of York, the Liberals were in an actual majority. From a political point of view it was therefore expedient to enlarge Manitoba and to reduce the limits of western Ontario.

Again, the Ottawa Government had a direct pecuniary interest in widening the area of Manitoba and lessening that of Ontario, since the Crown lands in Manitoba belonged to the Dominion,[1] while in Ontario they were, and are, the property of the province.

Immediately after Sir John's return to power in 1878, the Government at Ottawa had begun to avail themselves very freely of this source of

[1] 33 Vict. c. 3, s. 30.

revenue; and many timber licences were granted at nominal sums to prominent supporters of the Conservative party. From an official return made to Parliament in 1885, it appears that in 1883-4 alone nearly one million acres of timber limits in the 'disputed territory' were thus placed under licence by Orders-in-Council at the rate of $5.00 per square mile, or a little more than three-quarters of a cent per acre[1]. Some estimate of the value of the licences thus granted may be gathered from the fact that Mr. J. C. Rykert, M.P. for Lincoln and Niagara, who acquired, in partnership with one John Adams, a limit of 37½ square miles in the Cypress Hills, 1,300 miles west of Winnipeg, at $5 per square mile, or $187.50, sold it immediately afterwards to one Sands, a Michigan lumberman, for $200,000.[2] 1881

Lastly, it is impossible to ignore the fact that the policy of Sir John Macdonald and his Cabinet was influenced by personal as well as by financial and political considerations. It was the Hon. Alexander Mackenzie and the Hon. Edward Blake who had agreed to a reference of the Boundary Dispute, who had selected the arbitrators and the agents and counsel for the Dominion. It was Mr. Mowat who had won the case and borne off the honours. All these men were *personae non gratae* to Sir John and his colleagues. To upset their arrangements and undo their work was a task

[1] (See Sessional Papers, (Canada) 1885, Nos. 52c and 52f.; 1886, No. 61; 1887, Nos. 19 and 19a.

[2] See Commons Journals, 1890; pp. 90, 100, 168, 173, 176, 185, 194, 197-8, 204, 427, 429 and Appendix No. 4.

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which not only seemed politically expedient but was personally pleasing; and the wily statesman at the head of the Government lent himself to it *con amore*.

Meantime the plot—I use the word advisedly—against Ontario thickened and developed. On November 22-23, 1881, a Conservative convention was held in Toronto to organize the party for the impending Dominion elections of 1882. The proceedings were secret and one can judge of them only by results. What passed at that meeting between the 'Big Chief' at Ottawa and his provincial lieutenants at Toronto will never be known; but from that day forward the representatives of the Conservative party in the provincial House seem to have experienced a change of heart; not for the better, but for the worse. It was a backsliding, not a repentance. In 1880 and in 1881 they had voted to a man for Ontario, but now they were faced by the question of party v. country; and, unfortunately for them and for the province, party prevailed.

The first indication of this change of front was given in the debate upon the Address at the beginning of the Session of 1882. The third paragraph, as proposed to the House, read as follows:—

'That it is to be regretted that since our last Session no progress has been made towards a recognition of the right of the province to that extensive portion of its territory, our title to which, notwithstanding the award of the distinguished arbitrators appointed by the two Governments,

the federal authorities still continue to dispute; 1882
and that the grave practical evils resulting from the dispute have, since we last met, been greatly increased by an Act of the federal Parliament, transferring to the province of Manitoba the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the height of land.'

Mr. Meredith moved, seconded by Mr. Morris, to strike out this paragraph and substitute the following :—

'That while we regret the delay which has occurred in the final settlement of the northerly and westerly boundaries of the province, and while we are prepared at all times to maintain by all lawful and constitutional means its territorial and other rights, we deprecate the taking of any course in the enforcement of these rights which is calculated to disturb the peace of the Dominion; and we desire to express our regret that your Honour's advisers have not taken the only lawful and constitutional means which, in the absence of the approval of the award by the Parliament of Canada, are open for the determination of the question.'

To which Mr. Sinclair moved in amendment that all the words in Mr. Meredith's amendment be struck out and the following added to the original paragraph of the Speech :—

'And we avail ourselves of this, the earliest opportunity at the present Session, to reiterate our determination to give our cordial support to

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any steps which may be necessary for asserting and maintaining the just claims and rights of Ontario as by the said award found and determined.'[1]

Early in the Session the Attorney-General laid before the House :—

(1) A report made by himself to the Lieutenant-Governor on November 1, 1881, in which the whole history of the Boundary Dispute is reviewed down to the passing of the Manitoba Act by the Parliament of Canada and its coming into force under the Governor-General's proclamation of July 13, 1881.

(2) A dispatch from the federal Secretary of State (the Hon. J. A. Mousseau), dated January 27, 1882—the first official utterance of the Dominion Government on the subject of the award—reviewing the history of the dispute and suggesting a reference either to the Supreme Court of Canada or to Lord Selborne, Lord Cairns, 'or some other distinguished legal functionary,' who should be invited to come out from England to Canada 'for the purpose of hearing the evidence and deciding upon the Boundary Question.'

(3) The reply (February 18, 1882) of the Ontario Government to this dispatch, in which, after reviewing the history of the dispute, Mr. Mowat says—speaking by the mouth of the Lieutenant-Governor :—

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[1] It will be remembered that this was the very resolution for which Mr. Meredith and every other member of the Opposition had voted in March 3, 1881 ; yet, now (Jan. 27, 1882) they all voted against it.

'Your dispatch proposes that Ontario should abandon the award and submit the question anew to the Supreme Court of Canada for adjudication. This is the mode which you intimate that your Government now prefer to any other for a new litigation of the question of title. It seems remarkable that if this mode of settlement is so peculiarly proper and desirable, the suggestion is now made for the first time. A great and obvious difference between a submission to the Supreme Court now, and a direct and immediate reference to the Judicial Committee of the Privy Council, is that the former course would create years of further delay and involve great additional labour and expense; and that without any advantage since the final decision would be by the Privy Council. The proposal implies, too, that your Government contemplate that the evidence shall be taken anew and according to the usual practice of taking evidence in ordinary cases. A suit involving facts covering a period of nearly two centuries, and requiring documentary and other evidence from the Imperial archives in London, the archives of the Hudson's Bay Company, the public and other records in Paris, Washington, Albany, Quebec, Ottawa and elsewhere, would afford unusual occasion for repeated and long-continued delays and innumerable harassing questions of procedure. If the object were delay, no better means of delaying a conclusive decision could be advised. My Government decline consenting to the submission.' 1882

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'The proposal for inviting one of the two law Lords named in your dispatch, or "some other eminent English legal functionary," to come to Canada "for the purpose of hearing the evidence and deciding upon the Boundary Question as one of law," seems to my advisers to stand next in order as a means of indefinite delay. In view of the objection taken by your Government to any form of arbitration, my advisers were surprised at the proposal to submit the question to another referee, sitting alone, and without appeal, and who, though an English Judge, would in this matter be acting simply as an arbitrator. It is extremely doubtful if either of the noblemen named would accept the invitation, especially in view of the time which the taking of the evidence might occupy; and if either of them was willing to accept the reference, my advisers are of opinion that the decision of the question by any one English Judge, however exalted, would not "command general assent" to the same extent, or to anything like the same extent, as the decision of three arbitrators of such eminent ability and so well known to our people, and standing so high in public estimation here, as Sir Edward Thornton, Sir Francis Hincks and the late Chief Justice Harrison. It may further be observed that no English Judge has jurisdiction in his own country to adjudicate on the title of an acre of land except subject to appeal; and that this province should voluntarily abandon the adjudication of the three arbitrators named, in

order to have another trial and decision by one English Judge, without appeal, as to the title of 100,000 square miles of territory, is a proposal which does not commend itself to my advisers as one possible to entertain.' 1882

All the facts of the case having thus been placed before the House, the Premier, on March 9, 1882, moved, seconded by the Hon. Mr. Pardee, a series of resolutions, reciting the steps hitherto taken by the provincial and Dominion authorities, referring to the above report and correspondence, expressing the concurrence of the House in the position taken by the Government, and declaring that 'the persistent efforts of the federal authorities to deprive the province of one-half of its territory are, in the interests of the people of Ontario, to be opposed by every constitutional resort within the reach of the province.' 'The policy of the federal authorities,' said one of the Premier's resolutions, 'is inexplicable except in the light of the avowal which, in the debate in the House of Commons on the Manitoba Bill, was publicly made by the first Minister, when he announced that the purpose was to "compel" the Government of this province not to insist on the awarded boundaries; was to "compel them to come to terms" and to induce such a condition of the territory that "they must do so"; and the Minister predicted that the Government of this province "would come to terms quickly enough when they found they must do so." ' The resolutions went on to protest against the conduct of the federal Govern-

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ment, and to declare that 'the House approves of the refusal of the Government of this province to be coerced into consenting to the proposals contained in the dispatch of the federal Secretary of State, dated January 27 last, which were the only terms proposed to this province since the award; that 'it has now become the duty of the province to assume without further delay the full government and ownership of the territory,' and that 'while collision with the federal authorities is to be avoided, the stipendiary magistrates and other provincial officers should be instructed to see that as far as possible our laws are enforced, peace and order preserved, and justice administered as in other parts of this province, and that trespassers are not allowed to destroy the property of the province; and if the provincial authorities should, in the discharge of their constitutional functions, be resisted by federal authority, the responsibility is to be left with the federal authorities, and the remedy to the people whom the federal and provincial authorities respectively represent.'

The resolutions, while asserting that it would be most unjust for the federal authorities to entangle the province in a second litigation, recognized the possible expediency of an immediate reference to the Privy Council on two conditions : (1) that the reference should be based on the evidence collected and printed for the arbitrators, with any additional documentary evidence, if such there was; and (2) that pending the reference, the territory

should, by the legislative consent of all parties, be subject to the jurisdiction of the Legislature and Government of Ontario. 1882

Mr. Meredith, seconded by the Hon. Mr. Morris, moved in amendment a series of eighteen resolutions, reviewing the whole case from the beginning, contending that the agreement for arbitration was subject to the right of the Parliament of Canada to approve or disapprove of the award after it should have been made; that 'the Parliament of Canada in the exercise of the right so reserved to it with the full consent of the Government of Ontario, has withheld its assent to the adoption of the boundaries as defined in the award'; that 'while this House regrets that the Parliament of Canada has not seen fit to give such assent, it cannot fail to recognize the right of that body, in the exercise of its powers, to adopt a course which, in the judgement of its members, sound policy and the rights of the people of the whole Dominion dictate, and for the adoption of which they are responsible to the people of Canada'; that '*the award being as it now is*, by reason of the premises, *wholly nugatory and inoperative*, the whole question remains undetermined *and the parties to the negotiations are remitted to their original rights and position*'; that 'it is the duty of the Government to take steps for the immediate submission of the matters in dispute to the Judicial Committee of the Privy Council, a mode which was proposed by the Government of Canada led by Sir John Macdonald in 1872, and which

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that Government is still willing, as shown by the correspondence submitted during the present Session, to agree to'[1]; and finally, that 'while the House is prepared to firmly maintain by all constitutional means the rights of this province, it is compelled to protest, and does earnestly protest, against the action of the advisers of the Crown for Ontario in the premises—action which is inimical to the best interests of the province, hostile to the Crown, and which will not be sanctioned or tolerated by the local people of the province of Ontario.'

Mr. Meredith's resolutions were lost by a vote of 25 to 50, and those of the Attorney-General were carried on the same division.

I venture to say—and I think all unprejudiced persons must agree—that in their action at this crisis, judged even from the standpoint of mere party advantage, the Opposition were guilty of a grave tactical error.

Mr. Mowat's resolutions were strong, but not stronger than the occasion demanded. The first Minister of Canada, from his place in Parliament, had deliberately stated his intention to coerce Ontario into abandoning the boundaries which she had claimed from the beginning and to which her claim had now been confirmed by the decision of three 'able and impartial jurists.' Mr. Mowat said in effect 'You cannot coerce Ontario,' and 'What we have we hold.'

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[1] This was incorrect; the dispatch of the Secretary of State did not propose a reference to the Privy Council, but to the Supreme Court of Canada or to an English Judge. (See *ante*, pp. 390-2).

Mr. Meredith, in reply, not only reversed his twice repeated determination 'to sustain the award of the arbitrators by which the northerly and westerly boundaries of this province have been determined,'[1] and 'to give [his] cordial support to the Government of Ontario in any steps that it may be necessary to take to sustain the award, and to assert and maintain the just claims and rights of the province as thereby declared and determined'[2]; but he went further, and added the wholly unnecessary declaration that 'the award is wholly nugatory[3] and inoperative' and that 'the parties to the negotiations are remitted to their original rights and position.' 1882

Moreover, while the Opposition leader asked the House to condemn the Government of Ontario for its resolution to maintain the rights of the province, as declared by the award, he had never a word of censure for the Prime Minister at Ottawa, who was even then manœuvring to repudiate an agreement to which the honour of the Crown had been pledged for the past eight years, and to bring about that very collision of authority which the Ontario Opposition so strongly deprecated. It is almost inconceivable that Mr. Meredith should seriously have intended the House to adopt the policy of unconditional surrender advocated in his resolutions; for no one knew better than he

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[1] Journals Leg. Ass., 1880, vol. 13, p. 160.

[2] Journals, 1881, Vol. 14, p. 151.

[3] 'Nugatory—having no worth or meaning; insignificant; trifling; futile.'—*Standard Dictionary.*

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that to abandon the award and give up possession of the disputed territory would seriously prejudice the position of the province in any future litigation.

In the subsequent argument before the Privy Council, Mr. Mowat relied, and successfully relied, on the decision of the arbitrators not less than upon the evidence which supported it; and the wisdom of his course was fully justified by the result. That Mr. Meredith should have been willing to forgo these advantages shows what would have happened had he, and not Mr. Mowat, been officially charged with the duty of maintaining provincial rights.

It was not long before Mr. Meredith's prophetic announcement that the Dominion Government desired a reference to the Judicial Committee of the Privy Council was fully justified. On March 31, 1882, three weeks after the Ontario Legislature had been prorogued, a motion was made at Ottawa by Mr. J. B. Plumb, that 'in the opinion of this House it is expedient that the westerly and northerly boundaries of the province of Ontario should be finally settled by a reference to either the Supreme Court of Canada or the Judicial Committee of the Privy Council in Great Britain, or by the Supreme Court in the first place, subject to a final submission to the Judicial Committee as the province of Ontario may choose; that such decision should be obtained either on appeal in a friendly action brought for the purpose, or by reference to the said Courts, or by either or both of them . . . . as the Government of Ontario may

prefer; and that the said reference should be based on the evidence collected and printed with any additional documentary evidence, if such there is —and that pending the reference the administration of the lands shall be entrusted to a joint commission appointed by the Governments of Canada and Ontario.' 1882

Mr. Plumb's resolution gave rise to a spirited debate, the first speaker in opposition to it being the Hon. Alexander Mackenzie, who had been Prime Minister of Canada at the time when the award was made (August 3, 1878). After taunting the Government for having put up Mr. Plumb to move a resolution which the Ministers themselves were ashamed to father, Mr. Mackenzie said that the award had been made after the last Session in which he was at the head of the Government and in control of the House, and he had therefore had no opportunity to propose legislation to confirm it; but that if he or those who acted with him had controlled the present Parliament not one Session would have elapsed without the award being ratified. He could not conceive anything more dishonourable in a political sense than for a Government to refuse to ratify the solemn engagements entered into by their predecessors. Great Britain believed the award of the Geneva arbitrators on the 'Alabama' claims to be unjust and unreasonable, yet she accepted and ratified it, and paid the money. Great Britain believed, and we all believed, that the decision of the German Emperor with regard to the San Juan boundary was not according to

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the evidence, yet she never dreamed of refusing to ratify the award. The counsel who had represented the Dominion in this matter before the arbitrators were men of ability; and no objection could be taken to the gentlemen who acted as arbitrators. These gentlemen had had all the documents before them long before they met, and had arrived at their conclusion, no doubt, after carefully perusing them. He regarded the course of the present Government as a wilful violation of the rights of Ontario and of the obligations which should exist between a Government and their predecessors in the management of public affairs; and he confessed that the reasons which had actuated the leader of the Government in putting up Mr. Plumb to move this resolution were to his mind utterly inexplicable.

Neither the first Minister (Sir John Macdonald), nor the leader of the Opposition (Mr. Blake), spoke in the debate. Mr. Plumb's resolution was carried: yeas 116, nays 44, but it was not communicated to the Ontario Government for four months, viz.: until September 4, 1882.

Meantime Manitoba, encouraged by the action of the Dominion Government and Parliament and of the Ontario Opposition, proceeded to invade western Ontario. Justices of the Peace were appointed at several places west of Port Arthur, where Ontario magistrates had been exercising jurisdiction ever since 1871.[1] Rat Portage, where Ontario had already a resident stipendiary magis-

[1] Under 34 V. c. 4 (Ont).

trate, a court house and gaol and a small police force, was now incorporated as a Manitoba town (July 18, 1882); a building was acquired to be used as a gaol or lock-up, and a police magistrate was appointed. This was the situation of affairs when the Ontario Legislature met on December 13, 1882. The paragraph of the Address, in reply to the Speech from the Throne, expressing 'regret that the federal authorities continue to dispute the title of this province to its northerly and westerly boundaries, notwithstanding the unanimous award of the arbitrators made and published more than four years ago,' was 'agreed to on division,' *i.e.*, it was challenged by the Opposition but not pressed to a vote; and I have elsewhere[1] recorded the fate of Mr. Meredith's motion of want of confidence in the Government, because they had not 'taken steps to secure the final determination of the Boundary Dispute by means of a reference to the Judicial Committee of the Privy Council.' 1882

During the Christmas intermission of the Legislature a large Liberal convention was held in Toronto for the purpose of framing the platform of the party in the coming provincial elections. According to a writer, who was never too friendly to Mr. Mowat in his annual reviews[2] of Ontario political affairs :—

'The number of delegates was unprecedentedly large; and Shaftesbury Hall, which had been

[1] *Ante*, p. 396.

[2] Morgan's *Annual Register* for 1883, p. 137.

selected as the place of meeting, was wholly inadequate to contain them. The convention therefore adjourned to the pavilion in the Horticultural Gardens, the largest hall in Toronto, but even there all could not be accommodated; and it was stated that five thousand were present there, while fifteen hundred more held a subsidiary meeting in the hall originally chosen.'

The subject which chiefly occupied the attention of the convention was that of provincial rights; and resolutions condemning the action of the Dominion Government in disallowing the 'Rivers and Streams Bill' and repudiating the Boundary Award, were unanimously and enthusiastically carried.

An address was presented to the Hon. Oliver Mowat, expressing the 'earnest esteem and unwavering confidence of the Liberal party,' and promising him their united and hearty support at the approaching general elections.

Replying to this address, and speaking to these resolutions, Mr. Mowat said :—

'The elections which are now approaching are not to be decided upon ordinary grounds, or in reference to ordinary issues. Half your territory is at stake . . . . It is no bold thing for me to say that the disputed territory is yours, that it belongs to this province and has always belonged to this province. It is no new claim that we are setting up. Until the settlement with the Hudson's Bay Company in 1869: until a release was obtained by the Dominion Govern-

ment of the claims of that company, no person in all Canada doubted, no one ever disputed that this territory belonged to Upper Canada and was part of this province. Grants of land were made there and justice was administered there. Our Courts held jurisdiction in that territory, and our Government insisted that they had jurisdiction there likewise. And who were they who held and expressed these views ? Sir John A. Macdonald was one of them, and Sir Alexander Campbell was another, and the Hon. Joseph Cauchon, when Minister of Crown Lands in 1857, was another . . . . Sir George Cartier, the trusted and chosen and esteemed leader of the Lower Canadians, was also one of those who joined in the declaration that the evidence in support of the contention that that territory was ours, was "so clear that no one who made an impartial investigation of the evidence could doubt that it belonged to Upper Canada." Other Lower Canadians who were members of the Government took the same view, as well as representatives from the Maritime Provinces after Confederation.' 1883

'You will see, therefore, that when Ontario insisted that that territory was hers she was making no new claim. She was merely insisting that these old declarations and admissions shall still be acted upon; that as all her statesmen and people, up to the period I have mentioned insisted that the territory was ours, so should the Government and Parliament of Canada still continue to do.

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'But it is well that you should know another ground upon which our claim to the territory rests. It has been investigated by the ablest men in Upper Canada. We never had in this province a Chief Justice who possessed in a larger degree the confidence of the profession and the public than the late Chief Justice Draper. He was one of the most able, painstaking and learned of our Judges; and we have on record his written opinion, deliberately given after having been engaged on the study of this question for many years, that the province extended at least as far west as the arbitrators have given to us. Then in 1874 the matter was left to arbitration by both Governments, the decision of the arbitrators or a majority of them "*to be final and conclusive*," and you had a unanimous award. From whom ? You had another Chief Justice investigating the case, a Chief Justice standing high in public estimation. I refer to the late Chief Justice R. A. Harrison, not a Liberal but a Conservative, and a personal friend of Sir John A. Macdonald. He came to the conclusion which you will find embodied in the award. His judgement was that the awarded boundaries were the "true boundaries of Ontario." You have also the opinion, after like investigation, of another most eminent man, the Right Hon. Sir Edward Thornton, D.C.L., who was then British Ambassador at Washington and is now British Ambassador at St. Petersburg. He came to the same conclusion as that which had been arrived

at by Chief Justice Draper and Chief Justice Harrison, and by so many of our statesmen and legislators before. Sir Francis Hincks was the arbitrator chosen on that occasion on behalf of the Dominion. He also investigated the evidence in detail; and he arrived at precisely the same conclusion. Now, it is perfectly idle for nine members of a partisan committee of the House of Commons to say that an award which was the deliberate and well-considered opinion of such men as these, has, or can have any other foundation than the absolute right of Upper Canada to the boundaries which we claim. We have the right to these boundaries. We have the award; and as representatives of the people of Ontario we have stood by these boundaries, and we mean to stand by them. (Cheers.) 1883

'The suggestion has lately been made that the matter should be left to the Privy Council. That proposition has to some persons a look of equity and reason, which, however, is only on the surface. In the first place, I may notice that there has been no offer on the part of the Dominion Government of such a kind that it is possible for us to accept or even to consider. If I were to accede to a proposal to leave the question to the Privy Council, not only should I be acceding to that which it was unjust to demand, not only should I be putting this province to an expense to which it should not be subjected, but I should really *be enabling the Dominion Government to delay indefinitely any settlement at all.*

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'Any lawyer knows that in order to bring a matter before the Privy Council every step in the process has to be consented to by all the parties to the case. In this case the proposal was that, besides the evidence laid before the arbitrators, any additional documentary evidence might be put in. You see how this would work. I prepare my list of documentary evidence and send it to Ottawa and Winnipeg,—since the consent of both the Ottawa and Manitoba Governments is now necessary before another step can be taken,—and *they have an absolute discretion to delay as long as they like* in saying whether that list is acceptable or not. Then, too, they have the right to put in additional documents *and to delay just as long as they like* in doing so. Before we could go to the Privy Council there are many steps to be taken, but, speaking briefly, all *these steps require the consent of these two Governments*, and not only their passive but their active consent. *We have no means of compelling that consent*; *we have no means of preventing delay*,—and you see what the consequence would be.

'Observe, too, that while all this is going on the Dominion Government is still in possession of the territory and is freely granting timber licences therein. Our timber is being destroyed, and a hostile population is occupying the territory, the only settlers being trespassers and squatters. There is therefore every year an enormous loss to this province, and, of course, the longer the delay, the greater the loss.

'We know what Sir John Macdonald's object is. 1883
I have good cause for imputing to the Dominion Government a disposition to delay this matter. It took three years and a half from the time of the award to get them to answer any of our proposals about a settlement. Dispatch after dispatch we sent them; and the only answer we got was that they had been received and would be considered. The Dominion Government themselves brought Manitoba into this question by passing an Act by which the concurrence of that province became necessary to a settlement of the dispute; and, though they pretend to be pressing for a reference to the Privy Council, *they have never yet got the consent of Manitoba to that reference*, or even ascertained whether Manitoba would give its assent, although the Legislature of that province was in session for some time after the passing of Mr. Plumb's resolution repudiating the award.

'Had I at once blindly consented to the proposal of the Dominion Government, without any conditions, or with the conditions suggested by Mr. Plumb's resolution, I would have allowed myself to be caught by Sir John Macdonald; but he hasn't caught me yet, and I don't think he will.

'It is of the utmost importance for us to get undisputed possession of this territory at the earliest possible moment, in order that we may see to the settlement and management of the lands and prevent our forest wealth from being wasted and squandered, as it now is. It is a

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disgrace to a civilized country that a territory of nearly 100,000 square miles should be without any settled laws or government; and yet that is the condition of things to-day in this disputed territory. It might be worth our while to consent to refer this matter to the Privy Council, if they will allow us to have undisputed possession of it in the meantime. We should, of course, in that event be trustees; but I think the security would be ample. (Cheers.) These things are necessary, and if they would consent to this I should be quite willing to give them any further reference they chose. I know we have a righteous cause, and I have no fear of the result of another inquiry; but I don't want the territory to be stripped within the next ten years, and this our opponents could easily accomplish within that time if they are so long in power.'

A few months afterwards Mr. Aubrey White, now Assistant Commissioner of Crown Lands for Ontario, was sent to visit the 'disputed territory,' and, if necessary, to seize any timber cut upon the lands claimed by the province outside of the Canadian Pacific belt. Mr. White reported to the Hon. Mr. Pardee the names of several persons who were so cutting timber under Dominion licences, but no seizures were actually made.

Later, in response to official and other representations from the district, a commission was issued by the Ontario Government (June 12, 1883) to George Burden, Esq., of Rat Portage, who had been for some months an Ontario police

commissioner and magistrate in the territory, and George R. Pattullo, Esq., of Woodstock, Ont., 'to inquire respecting claims which may be made by squatters and others to mining lands, water privileges, farm or town lands or other rights of property in the disputed territory, and from time to time to report the evidence taken and the opinion of the Commissioners thereon.' 1883

In addition to these duties the Commissioners were given general instructions to co-operate with Mr. W. D. Lyon, who, since 1879, had been stipendiary magistrate for Ontario in the Thunder Bay District (including Rat Portage), in preserving the peace and maintaining the authority of the province throughout the territory.

To strengthen the hands of the authorities at Rat Portage, to guard against further trespasses on Crown lands, and to prevent the newly-claimed jurisdiction of Manitoba from ripening into a right, the Commissioners were authorized to increase the regular police force; and it was subsequently found necessary to swear in several special constables in order to assist the ordinary officers in the preservation of the peace, in the protection of the inhabitants and the security of property in and around Rat Portage, Mr. Burden, stating in his report that 'this step has been rendered unnecessary by the fact that it has been openly declared that some of the leading malcontents would organize the unemployed labourers and others to resist Ontario's authority in the matter of timber seizures.'

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During this period, viz.: from July to November, 1883, there was naturally some friction between the official representatives of the two provinces in Rat Portage, and there was an occasional *fracas* between some of the opposing constables. But the reports of these proceedings that reached the world outside, were grossly exaggerated. Certain imaginative editors in Winnipeg and Toronto, aided by equally imaginative correspondents at Rat Portage, whiled away many an hour and filled many a newspaper column during those dull dog-days by describing, in lurid language and with picturesque personal epithets, imaginary scenes of disorder, riot and even occasional bloodshed. The truth is, that while several arrests were made during the summer, there was very little lawlessness or disorder, and visitors to the beautiful islands in the Lake of the Woods and to the town of Rat Portage were wont to express surprise when they found all quiet at the scene of these supposed hostilities.

Until now, the province of Ontario had been officially represented in the territory by a stipendiary magistrate, a gaoler, a few policemen and other local officers. A court house, gaol and gaoler's residence had been erected, and provision made for the making of roads, the building of bridges, the erection of a schoolhouse, and other local improvements. These governing functions and improvements were necessarily in the hands and under the supervision of provincial officers. But now the time seemed ripe for the establish-

ment of local government in the district. On August 13, 1883, a meeting was held at Rat Portage to consider the advisability of obtaining municipal incorporation from the province of Ontario. Representatives of both provinces were present, the Hon. John Norquay, Premier of Manitoba, being chief spokesman for that province, while Commissioner G. R. Pattullo was selected by his colleagues as the spokesman on behalf of Ontario. A resolution favouring the organization of a municipality under the jurisdiction of Ontario was carried by a large majority, and on August 22, the necessary petition for an election having been meantime presented to the stipendiary magistrate (Mr. W.D. Lyon), a reeve and councillors were elected by acclamation. On September 28, the first election for the newly created constituency of the district of Algoma in the Ontario Legislature was held, when Mr. R. A. Lyon, the Government candidate, was elected by a majority of 114. An election to the Manitoba Legislature of a member for the new constituency of Varennes, which covered the western part of the disputed territory, was held on the same day, the successful candidate being Mr. J. A. Miller, Q.C., Attorney-General for the province. 1883

It having been announced that the Winnipeg Field Battery had been ordered to proceed under arms to Rat Portage on the day of the double polling, the Hon. A. S. Hardy, Provincial Secretary of Ontario, who had just arrived at Winnipeg, addressed to the commanding officer a remon-

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strance against such an invasion of Ontario's territory. This remonstrance was unheeded and the battery came as ordered. The officers and men spent a pleasant day at the supposed 'seat of war,' fraternizing freely with the Ontario officials and other citizens; the polling passed off peaceably, and there was no occasion to use the field guns. The prudence and good sense of the battery's commanding officer and Ontario's official representatives thus prevented what might easily have resulted in a dangerous conflict, with far-reaching consequences.

Soon afterwards it was announced that the Manitoba authorities were about to take steps under Manitoba law against the holders of Ontario liquor licences. The Ontario authorities determined to resist such interference if attempted. Having accepted the fees and issued the licences, they felt bound to protect the rights of the licencees, and assurance was given them to that effect. Accordingly, when a summons was issued by the Manitoba authorities against one of these (named McQuarrie), no answer was made to it; and a warrant was therefore issued for his arrest. No sooner had he been arrested by the Manitoba chief of police and three of his men, than they, in turn, were arrested by a superior number of Ontario policemen, and McQuarrie was liberated. Creighton, the Manitoba chief of police, was detained in custody, the other three prisoners being released. This was done at the request of Mr. J. A. Miller, Q.C., Attorney-General of Manitoba,

who intimated that he would make Creighton's a test case. He accordingly made application to the Court of Queen's Bench in Manitoba on November 21 for a writ of *habeas corpus*, demanding the release of Creighton by the Ontario authorities. 1883

Meantime, Mr. Mowat, who had returned from England, put himself in communication with the Manitoba Government, suggesting an interview with Attorney-General Miller, to take place in Toronto, for the purpose, if possible, of agreeing upon some basis of settlement. This suggestion was promptly agreed to by the Manitoba Government. Mr. Miller came to Toronto and remained there for some time, during which numerous conferences were held between him and Mr. Mowat, with the result that an agreement was arrived at, a Special Case agreed upon for submission to the Privy Council,[1] and arrangements were made for a joint administration of civil and criminal law and of the affairs of the territory pending the hearing of the Special Case. It was further agreed that either party might apply to have the Special Case set down for argument in June or July of the following year; and Creighton and all others arrested by either of the two Governments were released in the meantime.

The action of Ontario in resisting the interference of the Manitoba authorities with the Ontario licencees, and the prompt arrest of the Manitoban chief of police, resulted, as they were

[1] See the Special Case, *post*, Appendix IX.

Chap. XIV intended to result, in bringing the two Governments together in a conference which led to a solution of the long-pending Boundary Dispute, so fraught with danger to peace and good-will between the two provinces of Manitoba and Ontario and between Ontario and the Dominion.

CHAPTER XV

THE BOUNDARY DISPUTE
(2) THE PRIVY COUNCIL DECISION

ON July 15, 1884, the Special Case was argued before the Judicial Committee of the Privy Council. The Law Lords present were, the Lord Chancellor of England (Lord Selborne),—perhaps better known to non-professional readers as Sir Roundel Palmer—the Lord President of the Privy Council (Lord Carlingford), Lord Aberdare, Sir Barnes Peacock, Sir Montague E. Smith and Sir Robert Collier. 1884

The counsel engaged were: for Ontario, the Hon. O. Mowat, Q.C. (Attorney-General), Mr. Scoble, Q.C. (of the English Bar), the Hon. David Mills, and Mr. Haldane (of the English Bar); for Manitoba, the Hon. James A. Miller, Q.C. (Attorney-General), and Mr. D'Alton McCarthy, Q.C.; and for the Dominion of Canada,[1] Mr. Christopher Robinson, Q.C., and Mr. Hugh MacMahon, Q.C.

At the opening of the argument Mr. McCarthy claimed the right to begin, on the ground that

[1] The Dominion Government had at first declined to be a party to the Special Case, but subsequently, by Order-in-Council of May 6, 1884, they agreed to it, so far as it related to the definition of the westerly boundary of Ontario, but not so far as it related to the title to the lands thereby brought into question. The purpose of this latter reservation will appear hereafter. See *post*, p. 459.

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as he was attacking the award, he was in the position of a plaintiff; and he thus obtained an advantage which, as all lawyers know, is considered to be of no small value. He contended that the award had no legal validity; that the provision in the orders of reference, 'that the determination of the three arbitrators, or a majority of them, in the matter of the said boundaries shall be taken as final and conclusive,' was qualified by the subsequent words 'that the province and the Dominion agree to concurrent action in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at by the said arbitrators'; that acordingly, the award was of no legal effect, since, though confirmed by legislation on the part of the province of Ontario, there had been no 'concurrent legislation' by the Parliament of Canada.

Mr. Mowat in answer said :—

'What that sentence was intended to provide was in addition to what had been agreed to by the previous sentence, not in qualification of it. By the previous sentence the award is "to be final and conclusive"; by the following sentence "any legislation *that may be necessary* for giving it binding effect" is to take place . . . . There had been a controversy many years ago as to the boundary between the province of Canada and the province of New Brunswick; in that case an Imperial Act had been passed to give effect to an award made on a reference by the two provincial governments. There being that question,

both governments in the present case did all they could by their agreement to make the award final. It would have been a perfectly idle thing, in a great controversy like this, to leave the question to arbitrators if the award was to have no binding character. The arbitration would in that case be perfectly nugatory. The reference to future legislation was nothing more than to make the agreement as obligatory as the Governments could possibly make it and that the award should be conclusive. They agree in so many words that "it shall be final and conclusive." They do not say that any legislation shall be necessary; and there is no provision for any legislation beyond what is absolutely necessary. The language is : the province agrees to concurrent action in obtaining "such legislation *as may be necessary* for giving binding effect," etc.; but if no legislation was necessary for giving binding effect, then neither party under this stipulation could ask for legislation . . . . What I urge upon your Lordships is that the agreement about legislation is an additional stipulation, not a qualifying stipulation.' 1884

Mr. Scoble followed on the same side; and at the conclusion of his argument the room was cleared and their Lordships deliberated. After some time counsel were re-admitted and the Lord Chancellor said :

'Their Lordships are of opinion that the argument must proceed upon the finding that the award has not in itself the force of law.'

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Thereupon Mr. Mowat opened the case on behalf of the province of Ontario; but he had not gone far when Lord Aberdare inquired :

'Are you going to contend that the province of Ontario, or Upper Canada, consisted of that which the arbitration gave them, or do you contend for more ?'

Mr. Mowat: 'Of course I am now to contend for as large an area as I can establish.'

Lord Aberdare : 'That opens the whole question.'

Mr. Mowat : 'Yes, my Lord.'

Lord Aberdare : 'You do not limit it to the question whether or not the finding of the arbitrators was a correct one?'

Mr. Mowat : 'No, my Lord. We have a stronger case perhaps, on one side—a more conclusive case with regard to the western than we have with regard to the northern boundary,—and if we are not to have just the very area that the arbitrators gave us and if we do not succeed in getting the northern boundary that they gave us, we want a larger area in another direction.'

Sir Robert Collier : 'You would hardly wish to obtain an inconvenient boundary ?'

Mr. Mowat : 'We do not want inconvenient boundaries. We must be content with such boundaries as your Lordships hold to be legal boundaries, and if these happen to be inconvenient, we must subsequently try to negotiate terms for the purpose of compromising the matter. The whole area of the province, as limited

by the contention of Manitoba, is a little over 100,000 square miles, making Ontario the smallest of all the large provinces. That of Quebec is 188,000 square miles, or very nearly double, without taking into account any territory to which Quebec may be entitled north of the height of land. British Columbia contains 340,000 square miles, or between three and four times the area of Ontario; and even Manitoba, as now constituted under the Dominion Act, contains 123,000 square miles; so that Ontario would be considerably smaller than even Manitoba. On the other hand, if we succeed in establishing some such boundaries as the arbitrators gave us we shall still have not much more than half the area of British Columbia and only very little more than the area of Quebec.' 1884

Mr. Mowat then proceeded to argue that under the Treaty of Paris (1763), the Quebec Act (1774), and the commission issued under it to Sir Guy Carleton, then Governor-General of Quebec, it clearly appeared that the original western limit of the province was the east bank of the Mississippi River, and its northern boundary 'the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.'

These two points he established in an argument extending over two days, by reference to Acts of Parliament, charters, commissions, maps, treaties, opinions of Law Lords, official dispatches and a mass of similar testimony. It is impossible to give a summary of his argument; but I may say that

Chap. XV his colleague, Mr. Scoble, now Sir Andrew Scoble, and himself a member of the Judicial Committee of the Privy Council, told me not long afterwards that both he and the members of the Judicial Committee, were profoundly impressed, first, by Mr. Mowat's extensive and accurate information, and secondly, by the ability with which he handled the case from beginning to end and answered without losing the thread of his argument, the innumerable questions propounded by the Law Lords.

Mr. Scoble again followed Mr. Mowat and spoke during most of July 17. He was followed by Mr. McCarthy, whose argument continued from July 17 to July 21 inclusive, and who was in his turn followed by Mr. Christopher Robinson.

At the conclusion of Mr. Robinson's address :—

The Lord Chancellor : '(to Mr. Mowat) Their Lordships are of opinion that you may assume the southern boundary, and also the western boundary to a point north of the Lake of the Woods, to be sufficiently established as correct, as laid down by the award. They therefore wish you to address yourself to the question of what I may describe as the northern boundary of the disputed land.'

Mr. Mowat : 'It being established, then, that we are entitled to a northern boundary somewhere north of the Lake of the Woods, the question is what point north of the Lake of the Woods that boundary should touch. There are some grounds on which to found an argument in favour of extending the westerly line (as in the case of the

easterly) due north to the shore of the Bay[1], but, being satisfied with the line of the award, and favouring the natural water boundary, we do not press for the due north extension of the westerly line; and of this circumscription of our claim neither Manitoba nor the Dominion can in any way complain, as it leaves a larger territory at the disposal of one or other of them.' 1884

As is usual in such cases, the decision of the Judicial Committee was given in the form of a report to Her Majesty,[2] afterwards confirmed (August 11, 1884) by an Imperial Order-in-Council. The first two paragraphs of the report are as follows :—

'(1) That legislation by the Dominion of Canada, as well as by the province of Ontario, was necessary to give binding effect as against the Dominion and the province to the award of August 3, 1878; and as no such legislation has taken place the award is not binding.

'(2) That, nevertheless, their Lordships find so much of the boundary lines laid down by the award, as relate to the territory now in dispute between the province of Ontario and the province of Manitoba to be substantially correct, and in accordance with the conclusions which their Lordships have drawn from the evidence laid before them.'

The third paragraph defines the boundary lines of the disputed territory substantially as in the award, and the fourth paragraph declares 'that

[1] Hudson's Bay. [2] See Appendix IX.

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their Lordships think it desirable and most expedient that an Imperial Act of Parliament should be passed to make this decision binding and effectual.'

The whole of the disputed territory was thus declared to be within the limits of the province of Ontario; but owing to the reservation made by the Dominion Government in becoming parties to the Special Case,[1] the title to the land included within these boundaries could not be adjudicated upon by the Judicial Committee; and this, as we shall see, became afterwards a pretext for further delay on the part of the Dominion Government. Moreover, the question before the Privy Council related only to so much of the boundary of Ontario as divided that province from Manitoba; and consequently the line on the north was carried only to the eastern limit of the disputed territory, *i.e.*, to the meridian of 89° 9′ 30″. But the decision of the Judicial Committee established :—(1) that the conclusions of the arbitrators were correct, (2) that the Dominion Parliament had been wrong in declaring the awarded boundaries not to be the true boundaries of Ontario, and (3) that the only reason why the award itself could not be held to be legally binding, was the breach by the Government of Sir John A. Macdonald of the agreement which had been made in 1874 by the Government of that day to obtain such legislation as might be necessary to give it binding effect. The judgement showed also how unwise and impolitic had been

[1] See *ante* pp. 413, 415.

the action of the Ontario Opposition in 1882, when they voted for Mr. Meredith's resolution, declaring that 'the award is wholly nugatory . . . . and the parties are remitted to their original position;' and it fully justified the determination of Mr. Mowat's Government to maintain possession of the disputed territory. 1884

The news of the decision was received in this province with unmixed satisfaction; and Conservatives as well as Liberals joined in acclaiming the man who had borne the brunt of the struggle for the past twelve years; and who, though opposed by all the resources of the Dominion, had won the battle in spite of the opposition of Manitoba and the desertion of Ontario's cause by many of those to whom had been entrusted the protection of her rights.

When Mr. Mowat returned home in September, 1884, he received an ovation unparalleled in the history of any Ontario public man. Arriving at Niagara Falls, N.Y., on the evening of September 15, he was met by a large number of personal and political friends. Carriages were in waiting, and the party at once drove across the Suspension Bridge, the gates of which had been kept closed to keep back the immense crowds assembled on the Canadian side to welcome the returning Premier. A huge bonfire lighted up everything for a long distance round, and amid continuous and enthusiastic cheering a torchlight procession escorted him to his hotel, where an address was presented by the

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Liberals of the county of Welland, to which Mr. Mowat made a suitable reply. On the following morning (September 16) the party left for Toronto by a special train, placed at their service by Mr. Wragge of the Grand Trunk Railway. Delegations from Welland, St. Catharines and Grimsby welcomed the Premier as these places were successively reached; and at Hamilton a tremendous crowd greeted the train, and addresses were presented from the Reform Associations of Hamilton, and North and South Wentworth. Here the party was reinforced by a large delegation which had come to Hamilton to meet the Premier and accompany him to Toronto. The Union Station was reached at 11 a.m., and a procession was at once formed to escort Mr. Mowat to the Queen's Park, Major F. F. Manley acting as marshal. First came the representatives of the Young Men's Liberal Associations of Ontario, 1,500 strong; next, delegations, varying in number from 80 to 800, representing the majority of the constituencies of the province; Oxford, Mr. Mowat's own constituency, led the van with 280 delegates; then followed Toronto with 300, and fifty other constituencies, beginning with Addington and ending with York, including in all, by actual count, between twelve and thirteen thousand men.

The carriage containing Mr. Mowat, the Hon. Alexander Mackenzie, Capt. William McMaster, President of the Toronto Reform Association, and Mr. John Douglas, President of the Oxford Reform Association, was escorted by 120 mounted

men from East York, and followed by a number of other carriages occupied by prominent members of the Dominion Parliament and the Ontario Legislature. Fifteen bands marched in the procession; and all along the line of route from the Union Station to the Park it was accompanied by an increasing crowd, while in the Park itself a mighty throng of nearly 50,000 people awaited its arrival. 1884

The chair was taken by the Hon. Alexander Mackenzie, M.P. for East York, who thus introduced the guest of the day :—

'I have to-day the greatest possible pleasure in presiding over such a multitude of Reformers and Conservatives. I was reminded when I saw so much homage being done to Mr. Mowat —and he well deserves this mark of public esteem— of a letter which my late friend, the Hon. George Brown, received one day in the Parliament of old Canada. It was addressed to "Hon. George Brown, member for Upper Canada." Mr. Mowat is to-day the member for Upper Canada— (Loud cheers)—and long may he continue to be so. (Enthusiastic cheers.)

'We owe to Mr. Mowat and his Cabinet an inestimable debt of gratitude for the exertions they have made on behalf of provincial rights. Determined, systematic efforts have been put forth by the federal Government, practically to abrogate the Constitution of this country; and we owe it to Mr. Mowat and his Cabinet that these efforts have been successfully resisted.

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'I am not here to-day to speak, but simply to introduce to you one who needs no introduction. Long may he live, and may provincial rights always be defended with equal ability.'

Captain William McMaster, President of the Reform Association, then read an address from the Reformers of Ontario, concluding in the following words :—

'As fellow-citizens, remembering your long and self-sacrificing labours in the interests of your native country, for many years in the old Parliament of Canada, before the younger men among us were born, and for twelve years as the leader of the Parliament of Ontario; recognizing the many obligations under which you have placed the people of this province by legal and electoral reforms, by pure, efficient and economical administration; and knowing—as none others can know—how quietly, humbly and genially, through all this tract of years, you have "worn the white flower of a blameless life," we would on this day unite in the fervent hope that you may long be spared to manage the affairs, to develope the resources, to guard the interests, and to guide the destinies of the province you have so long loved and so faithfully served.'

Mr. R. U. McPherson then read an address from the young men of Ontario; and to this, and a number of other addresses of congratulation and welcome, Mr. Mowat replied as follows :—

'I feel overpowered at the grand welcome which you have given me to-day. It is all the

more touching to me—it is emphasized by the fact that you, Mr. chairman, are presiding over this grand gathering of Reformers and of a great many Conservatives from all parts of our noble province. (Cheers.) On an occasion which involves some honour to myself, I feel that honour all the more when the gathering is presided over by one of my best friends; one who has been my political and personal friend for a quarter of a century, and who deserves the friendship of every man, whether Reformer or Conservative. 1884

'The addresses which have been presented to me this afternoon are expressed in a spirit of exceeding kindness. They describe, at all events, the ideal of what, in my position, I should be and should do; and I accept them as expressing that ideal, though I am far from supposing that they represent the reality. All I can claim is that I have endeavoured to do my duty as I understood it; and I rejoice to know that in so doing I have had the appreciation of my fellow-citizens during the twelve years that have elapsed since my friend Mr. Blake advised the Lieutenant-Governor to send for me, and asked me to form an Administration. (Cheers.) But with whatever confidence I have been honoured by my fellow-citizens, I know well that of all the interesting subjects which have occupied public attention, and which occupy it now, there is but one which could have brought together such an enormous gathering as this.

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'We have been engaged lately in a great battle. (Cries of "And we won it.") Yes, and we won it. We won it for you, and we won it for every part of our country. The addresses which you have presented to me come from every part of our province: from Algoma on the north—which, thanks to the decision of the Privy Council, is now nearly as large as all the rest of Ontario together—and from the Ottawa River on the east, and from Sarnia on the west, as well as all along the Great Lakes and the interior parts of the country. I cannot doubt, therefore, the interest taken by the people of Upper Canada in this great subject. You are here representing all classes of our fellow-citizens, and I rejoice to know that among you there are not Reformers only, but Conservatives also.

'Now, why is it that we are so anxious that the limits of our province shall not be curtailed? First, and foremost, is because we love Ontario, we believe in Ontario, and we know from past experience that it is in the interest of the Dominion, as well as of the provinces composing the Dominion that the limits of Ontario should not be restricted. Ontario is, in fact, the "back-bone" of the Dominion; and we desire that that should continue to be the position of our province; that it should not be brought down to be one of the least of the great provinces; that there should be an extent of country ample enough to admit of its developement, so that, as the other provinces develope, Ontario should develope also.

'Now, there is no room for doubt that the settled policy of the Conservative leaders at Ottawa was to deprive Ontario of this disputed territory. Their public journals write as if the Dominion Government had been neutral in this matter; as if it had been a question only between Manitoba and Ontario: as if all that the Dominion Government wanted was to know who was the rightful owner of the territory. But the contrary of all that is certain. 1884

'From 1870, or 1871, the Conservative leaders at Ottawa adopted it as their settled policy that this territory should not belong to Ontario if they could help it. Their first step to accomplish this design was taken while my friend Mr. Blake was at the head of the Ontario Government. It was frustrated by him; though it would not have been frustrated if he, or some other Reform leader had not been then in power. The Ottawa Government of that day—the Conservative Government—did indeed agree with the Ontario Government, then under Mr. Sandfield Macdonald, that the question of the boundaries of Ontario should be settled by a Commission. But what were the instructions given to the Commission by the Ottawa Government? Was it to investigate where our boundaries were? Not at all. The Commissioners were instructed to draw a boundary line which would have excluded from Ontario the whole of the territory which has been since in dispute, and our right to which is now finally confirmed by the highest judicial tribunal

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of the Empire. (Loud cheers.) Neutral ! Why, the Conservative Government has never been neutral from that day to this. There has been no time during the whole of that period when they have not taken every possible means to deprive us of that territory. Sir John Macdonald, the leader of the Government, absolutely declared that in his judgement — in his competent judgement, as a constitutional lawyer—(Laughter)—not only that this territory was not in Ontario, and that the arbitrators had sought to add to Ontario a large territory to which she was not entitled; but he went further, and declared that his purpose was to "compel" Ontario to abandon the award of the arbitrators. Yet we are told that he is "neutral" in this matter, and that he only "wanted to know" where the true boundary was. He sought by every means in his power to accomplish that purpose of compulsion. But, Sir, we did not intend to be coerced. The people of Upper Canada had no mind to be "compelled." (Loud cheers.)

In 1881 Sir John Macdonald passed an Act giving the Dominion's claim in this territory to Manitoba, under the notion that this might be the means of accomplishing that compulsion which he publicly declared to be his object. 'Manitoba was near the disputed territory, and Toronto was far distant. It was easy for Manitoba to send in constables, while it was a long distance for us to send officers from this provincial capital. We were at that time in

possession of the territory, our officers were there, and our Courts were held there; but it was hoped that we would be "compelled" to withdraw from the territory; and when we did not withdraw, what did the journals of the Conservative Government at Ottawa do? They did their very best to force us to withdraw. They called our officers "cut-throats" and "ruffians"; they declared our course to be illegal and hostile to the interests of Canada. There was nothing in vituperation; nothing in misrepresentation which they did not do, in order to create a public feeling antagonistic to us, and induce us to withdraw from the territory. 1884

'Now what was the purpose which could be accomplished by forcing us to withdraw? I will tell you. According to judicial authority, where there is a dispute between two Governments in regard to territory, that territory, until the title is finally determined, belongs for all purposes of litigation and administration to the country which is at that time exercising jurisdiction there. If, therefore, we had withdrawn from the country, as Sir John Macdonald desired us to do; as he proposed that Manitoba, with Dominion assistance, should "compel" us to do; as the Conservative journals sought, by influencing public opinion, to "compel" us to do, Manitoba, by holding possession for a few years, would acquire a *prima facie* title; and the territory would practically be lost to us. But we would not, and we did not withdraw. We maintained our

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position, and the Manitoba Government found that there was no possibility of accomplishing that scheme for the destruction of Ontario's rights in that territory.

'Then we found Mr. Norquay, Premier of Manitoba, making speeches to reporters and others, declaring that all they wanted was to have the question settled by some competent tribunal. I telegraphed to Mr. Miller, Attorney-General of Manitoba, to come down here, and we would try to see if we could not settle it. I had no doubt whatever that a settlement could be arrived at, if the parties desired it; but the trouble had been, heretofore, in the parties pretending to want a settlement, when they did not really want it . . . .

Mr. Miller, therefore, came down at my suggestion, armed with full powers to act for his Government; and we came to an agreement by which the delay that had always been our experience in dealing with the Dominion Government was rendered impossible. He agreed with me—for he was just as anxious for a settlement as I was—that the matter should go before the Privy Council in the form of a Special Case, then and there agreed on; and we put it out of the power of either Government to create further delay by an express declaration that the matter should be heard not later than June or July of this year. We agreed that the evidence should all be in on a certain day—some day in April—and that evidence not then put in should on no account delay the hearing. Other details, having refer-

ence to the condition of the country in the mean- 1884
time, were provided for; and the effect of the agreement was, that the case was heard in July, and the judgement was that which the people of Ontario had long known ought to be the judgement; and which, as a lawyer, I had never any doubt would be the judgement.

'When we went before the Judicial Committee of the Privy Council to argue the case, who was it that confronted us? Had I merely to deal with the counsel for Manitoba? No. The Dominion Government employed the best counsel of the Conservative party in this country to show that Manitoba was right, and Ontario wrong. The Dominion Government did their very utmost to throw into the scale against us all the *prestige* that naturally belongs to the Dominion, as compared with any one of the provinces.

'But, it was all in vain. (Loud cheers.) The right was with us; the evidence was with us; we had an impartial tribunal; a tribunal whose ability and impartiality no one could impugn. The result is, that you, gentlemen, are here to-day, to express your joy at the result. Joy, which Reformers feel especially, because this result has been brought about by Reformers, and in spite of the efforts of the Conservative chieftains at Ottawa.

'Another statement constantly made by Conservative journals is that the Dominion Government was all along wanting to go to the Privy Council, and that the Ontario Government was

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all along opposed to such reference. That is not only untrue but it is the reverse of the truth. The award was made in 1878. If the Dominion Government did propose that we should go to the Privy Council, when did they make the proposal? Not in 1878, 1879, 1880, or 1881. Let every one look at the official documents, and he will find that in all these years not one word was said in any communication from the Ottawa Government to the provincial Government about a reference to the Privy Council. We were every year addressing dispatches to the Dominion Government on this subject; we were pressing them to have this matter settled; yet, during all these years, not a single suggestion was made on the part of the Dominion Government for this mode of settlement, or for any other mode of settlement, with one single exception. I thought it a disgraceful thing that this valuable territory should be in such a condition that no one could tell what Government had jurisdiction there; and I therefore asked that some of the Dominion Ministers should meet me for the purpose of seeing whether we could not find a basis by which that disgraceful state of things might be terminated. We had a meeting for that purpose in November, 1881. What we proposed was to go at once to the Privy Council; but they said "No." Sir John Macdonald proposed that we should have a new arbitration before an English ex-Judge. I did not think that a very reasonable or sensible proposition. We had already had a

reference before three very able men, in whom every one could have perfect confidence; and it seemed absurd to have the case tried all over again before a single Judge. (Cheers.) Further, this Judge, or ex-Judge, was to take all the evidence anew. In that event, it would be very easy to keep the question open for years, and leave the country in its present condition, during which time all possible political capital would be made out of it by the Dominion Government. 1884

'The next dispatch from Ottawa in which any reference is made to the subject of settlement—and the only dispatch from the date of the award up to that time—was received by us in January, 1882; and what was the proposal then made? Was it a reference to the Privy Council? No. So far from that being the case, the notion of a reference was actually condemned in that dispatch. They proposed again a reference to an English ex-Judge, or to the Supreme Court, going through all the evidence anew and giving opportunity for interminable delay. With respect to the Privy Council reference, all the Dominion Government ultimately said was this: that if both Ontario and Manitoba preferred a reference, though the Dominion did not, they would concur in it. They well knew that Manitoba would not express any such preference; they well knew that it would require the consent of both Manitoba and Ontario, and that such consent would not be given. What then do you think of journals declaring that it was the

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Dominion Government that proposed a reference to the Privy Council ?

'The Privy Council have held that the award is not legally binding; but they have themselves adjudged that the awarded boundaries were the right ones; so we are really in a better position than if the award had been declared legally binding. (Cheers.) The case was discussed by the ablest counsel in this country; six days were spent before the Privy Council in examining evidence, and they have come to practically the same conclusions as did the arbitrators. (Loud cheers.) We got nothing more from the arbitrators than that to which we were entitled, and which Mr. Blake, when premier in 1872, expressed his willingness to accept.

'But, while all this has been going on, while they have been taking the strongest measures possible to deprive us of our territory, the Ottawa Government have been making large grants of land and timber in the disputed territory to their friends. We have objected time and again; we have expostulated with them; we have asked them to tell us what they were doing. They would not even do that. Our dispatches were utterly disregarded. They were determined to keep us in the dark; and up to this moment they have done so. We know nothing yet as to what they have been doing, except from returns submitted to the House of Commons respecting land granted and timber licences issued. All these licences and grants are bad. The licences by

which much of the timber in that territory has been lost, and irreparable loss has been inflicted, are bad; and, so far as they are bad, the Ontario Government will put a stop to such action. We were not anxious to bring these persons before our Courts at once because of the numerous delays involved in deciding this moot question of right; but now that the Privy Council has given a final judgement we do not mean to delay longer in preventing the destruction of timber which it is our duty to protect, in the interests of the people of Upper Canada.' 1884

Mr. Mowat then replied to the address which had been presented to him by the young men of Ontario. He urged them to study the history of political parties, both at home and in Canada, concluding thus :—

'I should like to say a word or two to those who have had the misfortune of having a Conservative training. That was my own position. I was brought up in a very hot-bed of Conservatism. But, when a young man, I began to inquire, as many young men are now doing, with all the care of which I was capable, as to which of the two parties was right then. I came to the conclusion, judging by the history of the past and the events of the present, that the Reformers were right, and the Conservatives wrong. (Cheers.) Take responsible government. It was opposed by Conservatives and advocated by Reformers; yet Conservatives as well as Reformers now rejoice that we have responsible government.

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Take again municipal institutions, to which are owing so much of our prosperity. We older men, and all students of our history, know how Reformers were opposed on this point by Conservatives, and that it was not without great difficulty that they succeeded in winning that battle. Yet now Conservatives as well as Reformers rejoice that the victory was won. And when we look at the old land, and compare the history of Conservative and Liberal parties there, we find that the Liberals have generally been right and the Conservatives wrong. I ask you young men to consider these things and see whether they can come to any other conclusion than that at which I arrived many years ago. It is now thirty years since I decided this matter for myself; and during all these thirty years, except when I was on the Bench, I was a close observer of political affairs and I had something to do with most of the political leaders; and I tell the young men present that I have never for one day during that period had the slightest doubt as to the correctness of the conclusion at which I then arrived. (Loud and continuous cheering.) I rejoice, after thirty years' experience—experience of every kind—and in the light of all the information I have acquired, that I decided for the Reform party. (Renewed cheering.) I have been with the Reform party all that time, and I do not think that I shall ever belong to any other. I say to-day, to the young men whom I see before me, "Follow my example." (Enthusiastic cheering.)

'The grand reception which you have given me to-day shows the intense interest which you and those whom you represent take in the questions which I have been discussing. I rejoice in this welcome, because it shows that interest, and I thank all you young men, and those who are not young, for the part you have taken in giving me this splendid reception. I have loved Ontario always, but this day's proceedings make me love it better than before.' (Loud and enthusiastic cheers.) 1884

The Hon. Edward Blake then came forward in response to loud calls.

He reminded those present that while in this and other questions which could be settled by a legal tribunal Mr. Mowat had been successful and had led the Reform party aright, there yet remained questions of as vital importance, which must be settled by the people at large. It would be for the people to decide whether our Constitution should be a sham and a fraud, or a reality; therefore, although on this day of triumph they did well to consider the victories won, it behoved them as patriots, as Canadians, and as Reformers, to remember that there are struggles still to come, battles still to be fought, victories still to be attained—(Applause)—and that these struggle sare to be fought out by the electors at the polls. He joined heartily in the congratulations to Mr. Mowat on his victory, and hoped that he might be sustained in health and strength so long as to

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make the length of his Administration unexampled in the political history of the country. He expressed pleasure at seeing the Hon. Alexander Mackenzie presiding over the meeting. (Applause.) The people of this country never had any doubts about Mr. Mackenzie's views. They had always been clearly expressed, so that he who ran might read. Though his voice was not strong, his heart was with them. (Applause.) His judgement was with them; and they trusted and prayed that that voice might be restored to its former vigour, and once more give heart and hope to his friends, and strike terror and dismay into his enemies. (Loud applause.) He was glad to see the great ovation which greeted Mr. Mowat. Sir John and his friends had informed the people of Ontario that the province extended west not so far as Prince Arthur's Landing, and northward only to the height of land, and that the boundary for which Ontario contended could not be supported by any Court or tribunal in the world. And now the Court of Sir John's own choosing, assisted by the counsel of his choice, had practically disposed of all this as utterly wrong. (Applause.) He closed by asking three hearty cheers for the Hon. Oliver Mowat, which were given with enthusiasm.

Mr. Joseph Rymal, ex.-M.P. for South Wentworth, made a brief and humorous speech; and the proceedings terminated with cheers for the Queen.

The *Toronto World* (Independent Conservative) said on the following day :—

'What was by long odds the finest political demonstration ever held in Canada—and the *World* has seen most of those which have been held since Confederation—was that which took place yesterday in honour of the Hon. Mr. Mowat. The inspiration of its success was of a two-fold character. The Reformers were convinced that the Premier of Ontario had achieved a genuine victory; and secondly, they were determined to let the *Mail*, and the other papers and men who composed the rowdy element of the Conservative party see that they were not what that paper had endeavoured to make them out. The great features of the demonstration were its size—and it was greater than any ever held here before; its thoroughly provincial character—for there were more counties and corners of the province represented than in any previous demonstration—and lastly, the character and standing of the men who took part in it—for there never were so many solid, well-to-do, respectable men assembled in any procession before in this city. It was greater by far in its size, in its representative character and in its respectability, than anything of the kind which Toronto has ever seen.' 1884

And the *Toronto News* (Independent) said :—

'It would be difficult to exaggerate the heartiness, the enthusiasm, the success in all essential respects, of the reception accorded by the upholders of provincial rights to the Hon. Oliver Mowat, in celebration of his victory over Ottawa centralization and in the satisfactory settlement

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of the boundary question. It was a tribute such as no other Canadian public man has ever received. When we take into account the provincial character of the demonstration, the fact that it was no mere local congress of those drawn together by curiosity or temporary excitement, but a gathering of solid men, representing every quarter of the province, who left their homes to do honour to the champion of Ontario's rights, it is a mark of appreciation of which Mr. Mowat may justly be proud, and a memorable era in the annals of the province.'

In the evening a grand banquet in honour of Mr. Mowat was held in the Granite skating rink. Covers were laid for 1,050, and nearly every seat was filled. The galleries also were crowded with spectators, chiefly ladies.

The toasts to the Queen, the Governor-General, and the Lieutenant-Governor of Ontario having been duly honoured, the chairman (Hon. Edward Blake) said :—

'I am now called upon to discharge the principal duty of the evening, that of proposing the toast of "Our Guest"; and I do so with feelings of the greatest pleasure. There are many of us old enough to remember the first entry of Mr. Mowat upon a public career, which took place so long ago as the close of the year 1857; to remember the high position which he had then in the confidence of the public, the sphere of usefulness which he occupied before acquiring the position of a member of Parliament, and the great hopes

that were entertained by his party from his entry into that more exalted sphere. More of us—because I have come now to a later period—can remember how those hopes were realized, and how, after a comparatively brief term of service in the ranks, Mr. Mowat was called upon to take part in the councils of the country under a Liberal Administration; how, ultimately, he took a part in forming the scheme of Confederation and was a member of the Administration which brought that measure to an issue. We remember that for a period his political career was then interrupted by his acceptance of a high judicial office, which he filled with honour to himself and with advantage to his country for a considerable number of years. (Applause.) Now these were good and auspicious omens of that career which has opened upon him since—a career of still more exalted character, of more widened usefulness, than any which had presented itself before. 1884

'I have more than once said that it was to me a source of the very greatest pleasure when I found that it was possible to induce Mr. Mowat to accept the position of first Minister of Ontario in the year 1872, upon the occasion of the retirement of Mr. Mackenzie and myself from the provincial Administration. We felt that although there were men in the ranks of the party in the local legislature at that time whose services and ability gave promise and indication of their capacity well and worthily to fill the Prime-ministership, yet still that the party, and the

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country through the party, would receive the greatest possible security and advantage if Mr. Mowat could be induced to withdraw from the exalted and dignified position which he held and embark once more on the stormy sea of politics. (Applause.) Of those who took part in the transaction two are here to-night—Mr. Mackenzie, who was our chairman this afternoon, and myself. The third, George Brown, a true and devoted friend of Upper Canada and Ontario —one whose heart would beat with pride at the proceedings of this day—has passed to his reward. Twelve long years have passed since that time; twelve long years during which Mr. Mowat has had the chief responsibility, and has borne the main brunt of the assaults which devolve upon a political leader. He has had a longer experience in that very trying position than most public men of the day; and well and worthily does he come out of that long test. (Applause.) We have found his principles of action and his political views such as we are able to endorse with all the greater heartiness, with all the greater good-will, with all the greater confidence to-day, and every day from the experience of the day before. For my own part, I believe that it was no important part of his training for this office, something which has helped considerably to enable him to discharge it in a manner which has gained him a very great share of the confidence of the people, that he should have occupied during the season that he did, that judicial place; and I

think that we may not unfairly claim that his political course is described with sufficient accuracy by the words of the poet, who, speaking not of one who was then living, but writing a noble eulogy on one whose work was done, said :— 1884

"His statecraft was the golden rule,
His right to vote a sacred trust :
High over threat and ridicule
All heard his challenge. Is it just ?"

(Applause.) It does not do, gentlemen, because we are assembled to-day more particularly with reference to one transaction, however great or important,—it does not do, and it would not be worthy of ourselves—it would not be just to Mr. Mowat and his Administration—it would not be the just meed of reward of the Liberal party represented in the local legislature, altogether to forget, to pass over in silence its general course of policy during the twelve years in which he has led it.

'I do not intend to go into details, but I know that we are too apt to forget good deeds once done; and I wish to remind you that these have been twelve years of active legislative, executive, and administrative work.'

Mr Blake went on to discuss some of these questions, mentioning the satisfactory settlement of the problem presented by the Municipal Loan Fund debts, the legislation of Mr. Mowat's Government relative to education, municipal institutions, electoral law and the administration of justice, and referring more particularly to the

Chap. XV victories won by the Premier for provincial rights, in the Insurance Cases, the Escheats Case, the Liquor Licence Cases, the Rivers and Streams Bill; and, last and greatest of all, the Boundary Dispute.

He concluded a most eloquent and interesting speech by saying:—

'I hope my friend will in the future continue to triumph, as he has triumphed in the past, and that his career may last long. (Loud applause.) And when at length, full of years and honours, the end shall come, I believe we shall be able to say of him—

"Long shall the good State's annals tell,
Her children's children long be taught,
Or praise or blame, he guarded well
The trust he neither shunned nor sought."

'But we are not to-night uttering a requiem over departed greatness; we are not to-night recalling one whose work, however well done, is done. We are engaged in a happier task. (Applause.) We are engaged in giving, even in his lifetime, some portion of the reward which a just, an honest, a successful public man deserves. (Applause.) We are engaged in strengthening his hands, in holding up his arms, in giving him, so far as we can, the power to use the years which remain to him, for still greater and more effectual —services for the land he loves—(Applause)—the land which we are proud to claim for our own. (Loud cheers.) Well is he worthy of being the

hero of this day; and without more words I will only ask you now to show him by the fervency of your response to the toast, as this toast list says, "how high he sits in the people's hearts"—how deeply he has enshrined himself in the affections of the people of Ontario.' 1884

Mr. Mowat replied briefly, expressing his profound gratitude for the honour done him, and the difficulty he felt in expressing his sense of the kindness with which he had been welcomed back to Canada. He said :—

'You have spoken, Sir, of some of the measures of the Ontario Government during the past twelve years. I desire to recognize upon this occasion, as I have often done before, that a large part of the good which I have been able to accomplish as Premier, has been owing to the able and zealous colleagues with whom I have always been associated. (Cheers.) I have been exceptionally fortunate in this respect during the whole of my premiership. During the twelve years there have been some changes in the *personnel* of the Administration, but I have always found new men quite equal to fill the places of those whom they succeeded. My colleagues and myself have always been a band of brothers. (Loud cheering.) If I have been of any service in the various matters to which you have referred, the reason, in large part, is because I have always been glad to receive suggestions from all quarters in regard to what the public service was needing and what would further the public interests.'

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The honourable gentleman then went on to acknowledge the great services rendered to the province in the Boundary Dispute by the Hon. David Mills, who had been associated with him in the preparation of the case, and in the argument before the Privy Council and to review again—but briefly—the effect of the decision of the Privy Council on the future of the province. He resumed his seat amid long continued applause.

The Toronto demonstration was followed during the same week by another at Woodstock, the chief town of Mr. Mowat's constituency.

According to the local press, nearly 25,000 people were present. Mr. Mowat, accompanied by the Hon. Edward Blake and a number of other personal and political friends, was escorted from the station by a huge procession, led by a guard of honour consisting of 100 of the young men of Oxford, splendidly mounted on their own horses. The verandahs and windows all along the route were crowded with ladies; and in the business portion of the town the crowd of sight-seers was so large that even the roofs were covered with spectators. Bunting, ever-greens, flowers and other decorations made the streets gay with colour. Mottoes of welcome were everywhere, and a number of fine arches had been erected at different points along the route. The first, which stood at the corner of Winnett and Dundas Streets, was a splendid piece of work, with two spans crossing

the street diagonally, and meeting at right angles. The side nearest the station bore the greeting, 'Woodstock welcomes you all.' 1884

At the corner of Vansittart Avenue and Dundas Street was a semi-circular arch bearing the legends:—'Oliver Mowat, successful in three general elections, 1875, 1879, 1883'; and on the reverse side, 'Escheats, Insurance, Licences, Rivers and Streams.'

At Graham and Dundas Streets there was an imposing structure of evergreens with the motto, 'Home Rule for Ontario.' 'The Young Liberals of Oxford welcome Mowat'; and further down Dundas Street another large arch, bearing on one side the motto, 'God save the Queen,' and on the other, 'Mowat and Provincial Rights.'

At the Central Park a platform had been erected; and here the chair was taken by Mr. John Douglas, President of the North Oxford Reform Association. Addresses were read from the Woodstock Council, and from the Liberals of the county, and speeches were made by Mr. Mowat, Mr. Blake, and several other prominent members of the Liberal party.

In the evening a reception was held in the Skating Rink, which had been beautifully decorated by the ladies of Woodstock, and was crowded to suffocation by an enthusiastic audience. An excellent musical programme had been provided, and short addresses were delivered by the Hon. Messrs. Mowat, Blake, and others.

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Another demonstration was held on Tuesday, September 23, at Barrie, in which it was estimated that between eleven and twelve thousand people took part. The Hon. Edward Blake was chairman, and the speakers were the Hon. Mr. Mowat, Sir Richard Cartwright, the Hon. L. S. Huntington, the Hon. Mr. Fraser, the Hon. Mr. Pardee, Mr. John Charlton, M.P., Mr. Balfour, M.P.P., Mr. Lount, Q.C., and others.

Last, but not least, in the series of addresses presented to Mr. Mowat, in honour of his successful battle for provincial rights, was one from the council of the strongly Conservative city of Toronto. It was presented on New Year's Day, 1885, by the Mayor, A. R. Boswell, Q.C., at the City Hall, and was as follows :—

To the Hon. Oliver Mowat, LL.D., Q.C., Premier of the Province of Ontario :

'Sir,—The expiration of a quarter of a century since the city council had the honour of your presence as a civic representative, may be regarded as an opportune occasion for approaching you with an address, expressive of appreciative reference to the past and hearty good wishes for the future.

'Referring to the past, and to the Toronto of 1857 and 1858, it will ever be a matter of grateful recollection that she is indebted to your recognized powers of administration and management for the inception of many of her most useful acts of municipal legislation; and it is especially remembered that the present by-law regulating

the proceedings of the council is the outcome of your early and successful initiation of these regulations, in the by-law still known by your name, and entitled "An Act for the better administration of the affairs of the Corporation." 1885

'If the subsequent requirements of an active professional and public career necessarily caused a severance of your immediate connexion with civic affairs, we are gratified to recognize the enrolment of your name on the historical annals of our country, as an eminent jurist, as a member of the Legislature and the Cabinets of Canada prior to Confederation, as a delegate to the Quebec Conference on the Confederation of the provinces, and the creation of our proud Dominion, as adorning for some years the judicial Bench, and as filling, since 1872, the leading official station in the province, that of Attorney-General and Premier of Ontario.

"With the rapid growth and developement of the province has followed the marked and steady progress of its capital; and in the administration of your high offices just referred to, we are happy to avail ourselves of this opportunity for conveying—and that in the warmest terms at our command—an expression of our grateful sense of the unvarying courtesy with which we have ever been received, and the invaluable assistance, as well as support, which we have always experienced at your hands on the many occasions when we had to seek special legislation to meet the varied requirements of our city.

'In an address evoked by such feelings as we have attempted to express, it is the unanimous desire of the council to avoid political references which may in any way disturb the general harmony by which they are influenced in presenting it; but they feel that they need not hesitate to express their warmest congratulations upon the solution that has been arrived at of the disturbing influences which have so long prevailed in relation to a true definition of the boundaries of Ontario.

'We conclude with the heartiest wish that the blessings of Providence may be largely vouchsafed to yourself and to this great province whose affairs you administer.'

Mr. Mowat, replying, said :—

'Mr. Mayor, and gentlemen of the City Council,—I regret that I have found it impossible, in consequence of my many engagements, to prepare a formal answer to the address which has just been read to me. I must be content therefore with saying, almost on the spur of the moment, what occurs to me in reference to the matters to which you have referred. First of all, let me thank you for the very pleasant words which your address contains, for the very kind feeling which it expresses, and for the good wishes which it conveys. I heartily reciprocate them all. (Applause.)

I know and recognize that they have a special significance, because the address comes from a body constituted in a way very different from those bodies from whom I have been in the habit

of receiving addresses. (Applause and laughter.) 1885
I don't forget that you who have been saying all these kind things to me are, two-thirds of you, my political opponents. We have occupied that relation for very many years; and whatever you have said to me in this address has been said to me by those whom I have been fighting during this long time, has been said to the leader of the party opposed to you, and to one who has been for twelve years holding the provincial fort in spite of all attacks. (Applause.) You have been generous in the expressions which, under these circumstances, you have employed towards me. A brave soldier is ready to appreciate and recognize soldierly qualities in an enemy—Applause—and, though politically opposed to me, you have brought me here to-day for the purpose of hearing what kind things you can truly say of me, and what as political opponents, you choose to say to me. This is not a time to say what evil there has been in my course; you have been saying what good there has been in it that you are prepared to recognize. I thank you for all this. I have always had a very kindly feeling towards Conservatives; and well I may. I was born and bred in the most Conservative town in all Canada, Kingston, which until recently was known to be *the* Tory town of all the towns in this country. It was under these influences, and among these associations, that my early life was spent. My early associates were Conservatives. Four years of my professional education I received

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in the office of the great Conservative chief, Sir John A. Macdonald. (Loud applause.) My early partners in business were Conservatives. I have numbered, during all my life, amongst my most intimate friends, many strong Conservatives; and I believe that as hearty a friendship exists between myself and them, as between myself and the many Reformers who honour me with their friendship likewise.

'Politically we may be opposed to one another; but, I, like you, Mr. Mayor and gentlemen, am a resident of Toronto for a very much longer time than most of you; for I have been here for forty years. (Applause.) My personal interests are here, and there is none among you more interested in the prosperity of the city, or who desires to see it prosper more than I do. (Renewed applause.) And I believe that I have been able to accomplish something for the advancement of the interests of the city. You were good enough to speak of the special legislation which you have from time to time needed; and you have been good enough to compliment me for the assistance and support I have given towards your obtaining it. I apprehend that that legislation has been of considerable service to the city. Toronto would not have been so prosperous if that legislation had not been secured. The city has been most prosperous. There may considerable differences of opinion as to the cause of that prosperity. I have no doubt a great many of you would ascribe it in great

measure to the "N.P.," while a good many would say that this prosperity was in spite of the "N.P." (Laughter and applause.) I don't mean to discuss that question. But I believe you will all agree with me that some part—a considerable part—of that prosperity has been owing to the new railways which run into the city and which have received provincial aid, without which they would probably not have been built at all, or at any rate not so soon. (Hear, hear.) I can fairly refer to that here, because these roads were not Reform or Conservative institutions. Their promoters belonged to both parties, and the applications for aid were made by politicians of all classes. That aid was granted by the support of both parties in the House. Therefore, it is not a political matter; yet it is pleasant to reflect that it was during my premiership that this aid was given, and that Toronto has derived so much benefit from it. 1885

'You have been kind enough to refer to the two years I had the honour of being an alderman of the city. My first step in political life was as alderman for St. Lawrence Ward; and I remember that I took more trouble to be alderman for St. Lawrence Ward, canvassed more voters, addressed more meetings, and altogether took a great deal more trouble than at any succeeding election I have passed through during the twenty-eight years of my life since. (Applause.) I know, therefore, something of the difficulties which aldermen have about the elections, and

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of the inconvenience of their occurring once a year. But this calls attention to the debt of gratitude which the electors owe to their municipal representatives when these faithfully do their duty. It is not merely in this matter of elections that time is to be spent and effort made. I know from my experience during these two years, that if a member of your municipal council desires to do his duty, attempts to do it, and is competent for it, it requires a larger proportion of his time every year than is needed by a member of Parliament. (Applause.) Before I was in office, when I was merely a private member of the old Canadian Assembly, much less time was required for the faithful discharge of my duties than when I was alderman for St. Lawrence Ward. (Applause.) The contest, too, for that position, I have pleasure in remembering, was one in which I had the hearty support of leading men of both political parties, of every religious creed, and of all nationalities. (Applause.)

'Many of the men who then supported me have now gone to their rest: Mr. Gooderham, Mr. Worts, Mr. Jas. Stock, Mr. John Shea, and many others known to you, belonging to both political parties. Mr. Gooderham and Mr. Worts canvassed a large part of the ward with me; because I was utterly unknown to the people. I do not think there were half a dozen voters in St. Lawrence Ward known to me personally. But I had been living fourteen years in the city, and they knew something of me by reputation.

These leading men helped me, and the result was that I was elected at the head of the poll, Mr. Manning being second. Before I had been a year in municipal office a general election came on, and I was elected for South Ontario, with a majority, I am glad to remember, of seven or eight hundred; and this majority would not have been so great unless I had had Conservative supporters in South Ontario—(Applause.)—men who remained my supporters for long afterwards, but many of whom, I am sorry to say, returned to their first love after I left the constituency. (Applause and laughter.) In the following year I was alderman of St. James' Ward, and was re-elected without having canvassed for a vote, without having attended a single meeting or made a single speech. 1885

'You have referred in your address to my work during those two years. You have said what was most gratifying, coming from a non-political body, and especially from those, a majority of whom are my political opponents. You have told me that now, after more than a quarter of a century, my work is remembered; that it is still exercising a beneficial influence upon the affairs of the municipality. That is a thing which is most encouraging to a public man—to feel that if I did sacrifice a considerable amount of my professional business for the sake of attending to municipal work, it has not been without its reward—it has not ceased to exercise its influence during this long period. I would not have averred

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anything of that sort, had I not had your assurance of it, and known that you would not have given that assurance unless you had found by experience that such was the case. (Loud applause.) You were kind enough also to allude to my political career. You were good enough to express how gratified you have been at the different steps of that career.

'Now, I do not misunderstand all that. I do not infer from all that that you have any political sympathy with me, that you have any leanings towards the Liberal party. I don't suppose at all that you are going to come over to us. (Laughter.) I wish I could. (Laughter.) But I understand you to mean that if the people *will* have a Reform Premier, and a Reform Attorney-General, you are glad that I am that Premier and Attorney-General. (Loud and prolonged applause.) I accept the compliment in that sense. And may I express my hope that after my official life comes to an end, and my political opponents are as free to speak of it as they now are free to speak of my municipal life, they will be able to speak as kindly, as favourably, in as complimentary terms as they have done to-day of my municipal life. (Applause.)'

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